Mr. Turney: Mr. Reporter, could you read that answer?

Exam. Lawton: Will you read it back?

[fol. 1129] (Answer read.)

By Mr. Pou:

Q. When you say things of that type, you mean of the type illustrated by the 77 listed examples set forth in Exhibit No. 2?

A. That is correct.

Q. Would you say then, Mr. Blanning, that these 77 examples are typical instances of such practices that have come to your knowledge and your attention?

A. They are typical of practices which exist in some areas and some of them in all parts of the United States. The same practices are not common everywhere in the United States, but there are none of the 77 which are not typical of practices current somewhere in the United States.

Q. How long has that been the situation, please, sir?

A. As to each of the 77, I am not sure, but generally it has been ever since there has been regulation. I might state that it has spread. Some of those types have spread since the war. The practices developed during the war have increased the extent of some of them.

Q. Do you care to express an opinion as to whether or not the Commission should prescribe some rules and regulations governing practices of this type as to leasing and interchange of motor vehicles?

A. As to the question of whether it should be done by the adoption of regulations, I am not at present ready to answer [fol. 1130] for the reason that some of the practices maybe can be changed only by a change in the law. I am willing to express the opinion now that there are practices current in the industry which will and are now prohibiting the carrying out of the purposes of the national transportation policy in connection with proper regulation of the industry.

Q. With reference to the tentative rules or the draft of proposed rules which accompanied the order issued by the Commission last January in this proceeding, do you wish to state for the record whether you advocate the adoption of those rules or not?

A. There are four proposed methods of handling the question in the order. I am not advocating any one of those four.

Q. And you have attempted to set out your thoughts on that in your written statement, have you not?

A. That is correct.

Mr. Pou: Mr. Examiner, I believe that concludes the direct examination. I have been informed by counsel for some of the parties who are present that they wish to have the cross examination of Mr. Blanning deferred. I am going to let them speak for themselves on that. Ordinarily I assume it would be the proper course not to offer these exhibits which he has identified until after the cross examination is concluded but it may be, since we are informed in advance that some of those exhibits are going to be ob- [fol. 1131] jected to, that I should offer them now. I am perfectly willing to do it either way, as may seem best. If the parties are going to ask permission to defer the cross examination of Mr. Blanning, perhaps we had better hear from them on that first.

Mr. Lieberman: If Your Honor please, I certainly would request a continuance for the purpose of studying these voluminous exhibits that have been introduced and based upon innumerable reports, none of which I believe have been indicated to be present at the hearing. I think out of fairness to all the respondents in this proceeding and all of the parties of record that we should be afforded an opportunity not only to examine the exhibits but to prepare our cross examination of Mr. Blanning. I think at this time it would be appropriate to consider a motion for continuance of the entire proceeding so that we do have that opportunity and then be prepared after the cross examination of Mr. Blanning to present such testimony as we believe would be necessary either to refute some of the testimony of Mr. Blanning or offer such other testimony which we deem necessary in the interests of our clients. I so move, sir.

Mr. Turney: Mr. Examiner, I would like to join in that motion. The packet of exhibits which were presented to me did not have the last one in them. I had examined the others. I want to examine the third one to see whether the same

thing would be true. I think I will object to a number of them. I think in any event, however, that the cross exami-
[fol. 1132] nation of Mr. Blanning will be considerably shortened, maybe to the extent of days or weeks, if it is deferred until first there is a chance for argument on the admissibility of the exhibits and secondly; until there has been sufficient time for counsel to examine the testimony and exhibits to determine whether to go through the laborious and cumbersome process of cross examination on each of those items there or to put in affirmative testimony in rebuttal. It has been my experience in these general witch hunts that it saves a lot of time on cross examination by deferring the cross examination of the Commission's witnesses.

Exam. Lawton: Is anyone prepared to proceed with any cross examination of Mr. Blanning at this time?

Mr. Idol: We are prepared to proceed, Mr. Examiner.

Mr. Brodsky: Mr. Examiner, may I, as an additional reason for continuance, urge the fact that this petition which has been filed raises the question of the Commission's jurisdiction. A disposition of that issue will determine whether the proceeding may or may not continue and I submit, Mr. Examiner, that it is fundamental to the entire issue at hand.

Exam. Lawton: That is why it should have been filed before the hearing. If it had been, the hearing might have been postponed.

Mr. Shields: Mr. Examiner, I would like to inquire whether you are in a position at this time to indicate
[fol. 1133] whether or not this record of this hearing will be concluded at this session or whether there may be sessions in other parts of the United States?

Exam. Lawton: I can't tell you at this time, sir. We will have to wait and see what develops at this hearing. It may obviate the necessity for hearing at other points and hearings at other places in the country may still be necessary.

Mr. Shields: I think that would have a considerable bearing on the extent of cross examination of this witness.

Mr. Markowitz: Mr. Examiner, if it is the intent to defer the cross examination of Mr. Blanning until the testimony

of all other witnesses is in, then it is important to know whether additional hearings will be held or whether all other witnesses must appear at these sessions. If not, then I suggest that the cross examination go forward now so that that may be in the record before the other witnesses enter their testimony.

Exam. Lawton: I think we should proceed with the cross examination so far as can be done and I will defer ruling on the admission of the exhibits until after the cross examination.

Mr. McAuliffe: Mr. Examiner, I would like to inquire of counsel for the Commission whether the Commission intends to put on any more witnesses who are proponents of these rules that we have here?

Mr. Pou: Let me correct you to begin with. Mr. Blanning [fol. 1134] has just stated that he is not a proponent of these rules. We do not expect to do so if these exhibits identified by Mr. Blanning are received in evidence. If they are not and if the Examiner rules as someone in his statement a moment ago suggested that the persons who made these field reports should be available as witnesses, then, of course, it might become necessary to bring a lot of those people to the hearing to testify. That is the only way I can answer you now.

Mr. McAuliffe: Do I understand you then that the Commission will rest its case on these exhibits introduced by this witness who is not supporting the rules if the exhibits are admitted in evidence?

Mr. Pou: That is correct, sir.

Mr. Lieberman: If Your Honor please, frankly, I don't understand your position with respect to the cross examination here. May I suggest at this time that there be a short continuance so that counsel may have an opportunity to confer with each other on certain questions as to procedure?

Exam. Lawton: Before we start the cross examination, we will take a five minute recess.

(Short recess taken.)

Exam. Lawton: Come to order, please.

I want to direct your attention to the Commission's rules

against smoking and that rule applies in this room during the course of the hearing and also during any recess and also in the anteroom. There are receptacles provided in [fol. 1135] the lobby.

Are there any additional appearances to be entered?

Mr. Zuby: Nathan E. Zuby, 135 Broadway, New York 6, N.Y., appearing on behalf of the Independent Movers & Warehousemen's Association.

Mr. Macdonald: David G. Macdonald, 909 Investment Building, Washington, D. C., appearing for Service Trucking Company, Inc., Federalsburg, Maryland. I am admitted to practice before the Commission.

Exam. Lawton: Are there any other appearances?

I will state for the record that the petition filed on behalf of the Household Goods Carriers Conference is being filed with the Secretary in the usual manner and a copy is being put in the record in this proceeding.

With regard to further distribution of exhibits, if you can, try to use the anteroom out here for distributing the exhibits in advance of the next witness. It will probably save a little time and be less confusing. We will have some additional chairs after the noon recess, but if it then still becomes necessary to have larger quarters, we will move to the Commerce Department Auditorium.

Proceed, Mr. Pou.

Mr. Pou: Mr. Blanning is ready for cross examination. I had concluded.

Mr. Lieberman: If Your Honor please, I believe I made a motion and there has been no disposition of the motion. [fol. 1136] I made a motion for a continuance of the hearing in order to prepare for cross examination and there were certain additional motions made. I don't believe there has been any disposition of that motion.

Exam. Lawton: I will take that under advisement, inasmuch as some parties are prepared to cross examine Mr. Blanning to some extent. I think they should be permitted to do so at this time.

Mr. Lieberman: Then do I gather——

Exam. Lawton: If it is necessary, we will grant the request, but I think first we should have such cross examination as is prepared.

Mr. Lieberman: Do I gather from your ruling, sir, that insofar as our cross examination is concerned a continuance will be granted and an opportunity afforded us to prepare for such cross examination.

Exam. Lawton: As I say, I will give consideration to it, Mr. Lieberman. I can't rule on it at this time. Some of the cross examination might obviate the necessity for some of your cross examination.

Mr. Lieberman: Possibly and possibly not.

Exam. Lawton: Who is prepared to cross examine?

Mr. Idol: Mr. Examiner, I think perhaps I should first make clear the fact that I am not representing the Household Goods Conference of the American Trucking Association. That position will be made more clear later through a [fol. 1137] resolution which we will present in evidence authorizing the presentation of our case on behalf of American Trucking Associations with the exception of the Household Goods Carriers Conference and with the understanding that any dissenting conferences make separate presentations.

Mr. Lieberman: May I, at this point, sir, request Mr. Idol to clarify his position with respect to the so-called dissenting conferences? Is his appearance here on behalf of the entire American Trucking Association and all its conferences with the exception of the Household Goods Conference?

Mr. Idol: It is, yes.

Mr. Lieberman: Thank you.

Mr. Idol: Before proceeding with cross examination, I want to move to strike all of that portion of Mr. Blanning's testimony starting on page 3 with the third sentence in the third paragraph, reading, "They were instructed to give particular attention to practices which were undesirable for reasons other than highway safety," and continuing through to the end of the quoted letter on page 5. In support of that motion, I submit that this testimony implies that observance of safety regulations under leasing of equipment is in very much worse shape than with owned equipment. Second, that the quoting of a letter which obviously would not be admissible in evidence is just as objectionable [fol. 1138] in oral testimony as though it were in written form.

Third, the letter quoted is in some respects a self-serving declaration. It apparently is an excuse on the part of whoever wrote it, if it were written, for having violated the Commission's safety regulations and finally, the proposal that leased operations are less safe than operations with owned equipment is controverted completely by Mr. Blanning's Exhibit 3, part 6.

I move to strike all of the testimony described.

Mr. Ellis: Are you through, Mr. Idol?

Mr. Idol: On that motion, yes.

Mr. Ellis: I want to support that motion for the further reason that this document does not disclose who wrote this letter or what company he purports to represent. They are facts which we are entitled to know if it is going to be put in evidence in this case.

Mr. Lieberman: If Your Honor please, in connection with the motion just made by Mr. Idol, I should like to state that we would like to reserve our right to make any motion directed toward any of the testimony of Mr. Blanning or any of the exhibits until such time as there has been at least a ruling insofar as our request for a continuance and an opportunity to prepare for cross examination and that by my silence in connection with either this motion or any other motion directed toward Mr. Blanning's testimony it shall [fol. 1139] not be construed as a waiver on my part.

Mr. Turney: Mr. Examiner, I would like to join in the motion on the ground that we are effectively deprived of cross examination of the source of the facts stated in that letter and I certainly would have a lot of questions to ask if the author of that letter were on the stand and made those statements. I think we are entitled to that information.

Exam. Lawton: Mr. Pou, do you have anything further?

Mr. Pou: Mr. Examiner, I think the gentlemen are overlooking the fact that Mr. Blanning has stated in his written statement that this letter is offered as an illustration of complaints that have been submitted to him. He stated; "The difficulty or impossibility of obtaining observance of safe driving practices by one class of persons used by authorized carriers was illustrated by a letter received from

the Safety Director of one of the larger carriers which had recently instituted an intensive safety program, which letter was received about the time this proceeding was instituted. The letter contained the following statement which does not differ from the reports of conditions in many other companies." Thus it appears that he is not pretending to vouch of his own personal knowledge for the details set forth in that letter, but he is saying that that letter illustrates and is a typical instance of situations prevailing with a great many other companies insofar as his information as Director of the Bureau of Motor Carriers goes.

[fol. 1140] I call attention also to the fact that this is not a proceeding to try or convict or punish any person for something that person or carrier has done in the past. It is a proceeding to consider whether or not it is necessary or desirable or reasonable to prescribe rules governing leasing and interchange practices of carriers and to govern their future conduct. I think this letter as a typical instance, as he says it was, is admissible as an illustration of the thing that we are confronted with with respect to safety of operation.

As to the request or the demand that the name of this carrier be disclosed, I call attention to the fact, first of all, that there is a section in the law which forbids Mr. Blanning to make disclosure of that without permission or an order from the Commission. I am assuming that he has no authority to disclose that carrier's name. I don't think it would serve any good purpose to disclose it anyway, because we are not trying this carrier. We are not attempting to fasten any blame on that particular carrier. That letter is cited, as I said before, only as an illustration of what he said is a typical practice. I think it is admissible.

Mr. Burton K. Wheeler: Mr. Examiner, I want to support the representative of the Interstate Commerce Commission. It seems to me that a great many of these people who are objecting misunderstand or misconstrue the nature of this hearing. Under the rules of practice which have been adopted in a hearing of this kind the Commission is per-

[fol. 1141] mitted to introduce almost any kind of evidence, affidavits, or anything else. In addition to that, they

have the right to put in the rule without any hearing whatsoever. They don't have to hold a hearing upon a question of this kind. They can adopt a rule. The law is extremely broad with reference to the whole issue.

On the question of the authority of the Commission, it seems to me all you have got to do is just read the first paragraph of the law which gives the purpose of the law, the national transportation policy, to encourage the establishment and maintenance of reasonable charges for transportation service without unjust discrimination, undue preference, advantage, unfair or destructive competitive practices. We wrote into the law—and I happened to be the author of it in the Senate—that the policy laid down in the first paragraph was to be taken into consideration in the construction of each and every paragraph.

In a hearing of this kind, if you were having up the question of rates, that would be one thing, but here the question is as to whether or not certain rules should be laid down. It is like the enactment of a law and the practice is a good deal the same as it is with reference to hearings before a committee of Congress in which the widest latitude is permitted with reference to introducing evidence of that kind. Some of these attorneys apparently feel that it is the same procedure as it is in a court procedure where the witnesses [fol. 1142] are put under oath and the right of cross examination and so on, but in a proceeding of this kind an entirely different rule is provided as laid down by the rules of procedure and in the Reorganization Act itself. There is absolutely no merit, it seems to me, in the position taken by those who object to this statement of Mr. Blanning.

Exam. Lawton: I think to some extent this might develop into a proceeding of an adversary character where any carriers who are subject to regulation might be affected by the rules, but I do think that his testimony is a part of the background of reasons why in his expert opinion the investigation should have been instituted.

Do you have anything further to say, Mr. Idol?

Mr. Idol: Yes, sir. I wish to comment first that I have never heard of any different rules of practice being applicable to a hearing of this type than to any other hearing

before the Commission, with all due respect to Senator Wheeler. I think the Commission has generally observed in all of its proceedings rules against the admission of second-best evidence where there is no good reason for it. Here Mr. Blanning has prepared an exhibit on the basis of checks made by a man or men under his supervision which reflect the difference between operating safety, if any, by leased equipment and by owned equipment. I might say that I submit that there is no difference and that for him to make a [fol. 1143] statement which clearly implies that leased equipment is operated under worse conditions than owned equipment with regard to safety is wrong and the record should be corrected.

Mr. Todd: May it please the Examiner, on this motion I would also like to point out that this investigation is being conducted now under the provisions of the Administrative Procedure Act, which does require a hearing in a matter of this kind.

Exam. Lawton: And a hearing is being held.

Mr. Todd: And a hearing is being held by a hearing examiner. To the extent possible, at least, under this act the normal rules of evidence are to be applied. I think in this particular case if the Commission wants to put in testimony of this kind it has ample power to subpoena witnesses. The Commission evidently has this letter in its file and it could be properly identified and submitted in evidence. I would like to also point out that Section 222(d) of the Interstate Commerce Act in my opinion would not prohibit the Commission from divulging this information and making it known who the carrier is and bringing him into this hearing room for cross examination. I believe that would certainly strengthen the Commission's case.

Exam. Lawton: Of course, before the Commission prescribes rules it has to have reliable, probative and substantial evidence. I don't think the Commission would prescribe the rules based on this letter to which Mr. Blanning [fol. 1144] referred merely as an illustration. I will overrule the motion. Are you now prepared for cross examination, Mr. Idol?

Mr. Idol: Yes, sir.

Cross-examination.

By Mr. Idol:

Q. Mr. Blanning, I believe all of these exhibits were prepared prior to the decision of Division 5 in MCC 482?

A. Not all of them. Exhibit 3 was prepared subsequent.

Q. Am I correct in the understanding that Exhibit 2, prevalent types of leasing, is designed to portray operations which are considered legal under your rulings of law in Exhibit 1, but undesirable?

A. That was the instructions to the staff, yes.

Q. I take it you are familiar with the Commission's decision on the Riss Provider Case?

A. Generally, yes.

Q. With that decision in effect, would you not say that a great many of the cases covered in your Exhibit 2 are now illegal under that decision?

A. The Riss Provider Case decision is a decision of Division 5 and is not yet final and what has been held in that case doesn't necessarily mean that no rule is necessary.

Q. Isn't it final, Mr. Blanning? I had the impression it was a final decision.

A. The decision of Division 5—I believe there is still [fol. 1145] opportunity for a petition for reconsideration which has not yet been filed, as far as I know.

Q. In any event, would you regard that as being the current law on the subject, so far as the Bureau and the Commission are concerned?

A. The staff of the Bureau, of course, would follow the interpretation of Division 5 until it is overruled.

Q. I would like to inquire whether you have examined the cases in Exhibit 2 since that Riss decision and have formed any opinion as to how many of them would be illegal under the decision of Division 5 in that case?

A. I have not, no.

Q. I have examined them, Mr. Blanning. I am not going to try to go through these one by one currently. Let's take your first example on page 7 of Exhibit 2, where Carrier A has rights between Chicago and Louisville and Carrier B has rights between Louisville and points beyond. Carrier A

obtains a large volume of business that he wants to handle over Carrier B's lines. Under arrangements described in the exhibit, he does so. The service might be, under some circumstances, an interchange of freight which is authorized under the Motor Carrier Act. The objection that I see on the part of the Bureau is that Carrier B really doesn't have anything to do with this particular transaction beyond giving some forms to Carrier A and letting him perform the operation. Would not that operation be illegal [fol. 1146] under the decision of Division 5 in the Riss Case?

A. Well, I wouldn't attempt to pass on the law on the subject. I don't recall anything in that decision which would affect this situation at all, but I wouldn't want to get into a discussion of the law.

Q. Mr. Blanning, where Carrier A is doing all the hauling and the billing and getting all the revenue, isn't that right along the same line with what the providers were doing in the Riss Case, except that they gave back a portion of it to the carrier holding the operating rights?

A. Well, the substantial distinction is that the providers in the Riss Case were not carriers holding any authority at all and there was no pretense of any interlining, whereas this is an authorized carrier who is at least pretending that he is interlining equipment.

Q. But as soon as he gets off his own route, Mr. Blanning, is he in the same shape as a carrier who has no authority?

A. If you are referring to the Riss Case, I don't think that has anything to do with it.

Q. I disagree with that. I think that practically all of the examples shown under extension of operations in your Exhibit 2 are squarely within the docket of the Riss Case and are now illegal and could be stopped by enforcement of the Interstate Commerce Act. I refer you now to the second example in your Exhibit 2 on page 7. We talk about a pre- [fol. 1147] tended interchange arrangement and say it is handled sometimes without the consent of the interlining carrier. Is that not a clearly illegal operation when one carrier is operating over another carrier's route without his consent? Has he any shadow of right to do that and

cannot the Commission prosecute that without regulations?

A. I wish I knew clearly what was illegal. That practice is common. It is even common among some of the biggest carriers.

Q. Without the consent of the carrier over whose routes they are operating?

A. Without the previous knowledge of the carrier over whose routes they are operating and of course without its consent.

Q. I think there is a possible difference between previous knowledge and consent, but when Carrier A runs down from A to B and then goes clear off his own route without the consent of anybody or any carrier holding rights, it seems to me that he is clearly operating unlawfully and that no amount of regulation will stop that without enforcement.

A. Would you mind selling that idea to our attorneys in the courts for me? I would like to have that practice declared illegal.

Exam. Lawton: Is it your thought, Mr. Blanning, that rules and regulations would aid in enforcing the Act, that is, even though it may be admitted that a certain practice [fol. 1148] is at present in contravention of the Act, because the Commission hasn't prescribed regulations to cover that, the prosecution is difficult?

The Witness: The proposed drafts of regulations are designed first to stop legal things which are undesirable and also to aid in giving proof of when they are illegal. It may be that there are cases where a carrier runs over the line of another carrier and the operation over that line is in violation of the law as it is today. The difficulty is in proving it when the second carrier is willing to fill out the required papers for five or fifteen per cent of the revenue. Under the regulations that are suggested in the order, under any one of the four types of regulations, that would be impossible or we would have proof when it occurred.

By Mr. Idol:

Q. But my point is here that the carrier violated the Act by running over the lines of another carrier without his consent. That is the illustration you give?

A. That is right. That is a frequent practice. Then later it is usual for them to, especially if they are caught——

Q. We don't say that. There are other examples along that line. But in this example my point is, Mr. Blanning, that you are simply pointing to a situation which exists clearly in violation of the law and which enforcement would correct without regulations.

A. There are two things. First, I am not sure it is clearly in violation of law. If it is, regulations would aid in [fol. 1149] producing the evidence that it is in violation of law.

Q. I can't agree with you, Mr. Blanning.

Exam. Lawton: I think that is largely a matter for argument on brief anyhow, Mr. Idol.

Mr. Idol: Very well, Mr. Examiner.

By Mr. Idol:

Q. I submit to you, Mr. Blanning, that the great majority of all of the cases under the extension of operations report cases which are either unlawful as they now stand, and before the decision of Division 5 in the Riss Case, or which, since that decision, are clearly unlawful. Or you familiar with the suggestion or the mandate of Division 5 to the Riss Company?

A. Generally. I am not familiar with the details of it.

Q. Do you, for example, know that Division 5 said that it ought to tell the Riss Company what it should do in order to comply with their findings and that nowhere in their following instructions did they require the elimination of owner-operator relationships or prohibit the use of owner-operators by authorized carriers or require a number of other things which are required or would be required by the proposed rules?

A. Well, the only purpose of the Division in telling Riss specifically what it had to do was to tell it what was the

minimum requirement in order to be a common carrier. It did not in that proceeding try to pre-judge this proceeding and tell what restriction should be placed on common car-
[fol. 1150] riers or place a specific restriction on Riss that is not placed on other common carriers. That is merely a definition of a common carrier, as I understand it.

Q. No, this is not a definition of a common carrier, Mr. Blanning. Division 5 says that in the circumstances, and I quote, "We believe that it may be helpful to all parties concerned to indicate herein what we believe is necessary for Riss to do if it is to comply with our findings in the order herein."

I submit again that substantially all of the matters covered under the heading of extension of operations in Exhibit 2 are of that type.

Mr. Eldred: Mr. Examiner, may we proceed with cross examination?

Exam. Lawton: I was about to say that we don't have any cross-examination, Mr. Idol.

By Mr. Idol:

Q. Next under the caption, Mr. Blanning, is operation by unauthorized carrier. We are not getting anywhere with the Riss Case, so I will discontinue that.

On page 11, your item No. 20, it is indicated that Carrier A has discontinued operations and is permitting an owner-operator to use its rights for five per cent. Is that not clearly unlawful?

A. I can't tell what the law is. It has not been held to be unlawful and practices of that kind are in existence. As long
[fol. 1151] as the carrier holding the rights will authorize the other person to use its trucks with its drivers for hauling and take a percentage of the revenue, I don't feel that we can clearly hold it is unlawful. Of course, it is contrary to Ruling 4, but as I have to accept the opinions of Division 5 as to what law is, I also accept the opinions of the courts.

Q. As far as this example goes, Mr. Blanning, it has nothing to do with Ruling 4 or leasing. As your example is worded, it appears to be nothing but a clear transfer of operating rights, without authority, which I submit leasing

regulations would not handle. What do you think about it? Do you think you will improve it?

A. It was my opinion when I put that one in there that it was covered by the statement as to what the law is and we have not felt competent to institute a prosecution against the carrier doing it or against any of the carriers who are doing that.

Mr. Idol: For the purpose of not unduly prolonging this record, Mr. Examiner, I would merely like to state that there are other items of the same type all the way through. We are not getting any definite answers.

Mr. Pou: Mr. Examiner, I don't like to object to proper cross examination, but I don't think this is proper cross examination and I do object strenuously to the last statement from which it might appear that this witness is evading or dodging or refusing or otherwise avoiding the answering of proper questions. I think the time to brief this [fol. 1152] case will come later and then they can discuss the Riss Case and each one of these examples, if necessary. Cross examination of Mr. Blanning on the law is, I think, adding nothing to this hearing on the facts.

Exam. Lawton: I think a lot of this cross examination probably will deal with questions of law which should be treated on brief. With that thought in mind, I believe we can eliminate a lot of the cross examination. Do you have anything further, Mr. Idol?

Mr. Idol: Yes, sir.

By Mr. Idol:

Q. On page 13, Item No. 35, the carrier has advertised in the paper for persons to buy trucks from it on a $2500 down payment. Would any of your proposed regulations prohibit that, Mr. Blanning?

A. I don't have any proposed regulations. This exhibit was intended for the purpose of informing the Commission as to practices that exist in connection with the use of trucks not owned by the carriers. Whether or not any particular regulation will correct any of the abuses or whether the Commission thinks it is an abuse is a matter for the Com-

mission. I am presenting to the Commission all the facts that I can in this proceeding as to the practices that are current.

Mr. Burton K. Wheeler: Mr. Blanning, as I understand it, you are citing these abuses that we consider abuses so that the Commission may have all the facts when they come [fol. 1153] to adopt the rule?

The Witness: That is the purpose of the exhibit.

Mr. Burton K. Wheeler: Or they may want to adopt rules or they may want to go to Congress and ask Congress for further laws to correct some of the abuses that they can't correct under the present law?

The Witness: That is right.

Mr. Todd: Mr. Blanning, there is one question I would like to ask to clear my mind on that particular point. With respect to these various instances that you have shown in Exhibit No. 2, do you personally consider them to be objectionable practices or is it your field staff that so considers them, individual members of your field staff?

The Witness: I don't personally object to all of the things that are shown in Exhibit 2. Some member of the field staff did. It was an instance of a practice existing which the Commission should know about because the Commission isn't necessarily going to have the same opinion as I do in this proceeding. So I presented all of the facts in connection with leasing, even those that I did not have the same objection to that the field did, in this exhibit.

Mr. Todd: Thank you.

Mr. Eisen: May I ask a question? Mr. Blanning, in your Exhibit No. 2 you state whether any of the items listed, other [fol. 1154] than Example 19-A, relate to tank truck operations?

The Witness: I don't remember off-hand. I had other instances, but whether they are included in these numbered items, I am not sure.

Mr. Eisen: Would you just state this, Mr. Blanning, whether in your opinion the operations of tank trucks are different from a practical and physical viewpoint from the operations of the dry package operators?

The Witness: Insofar as leasing is concerned, you mean?

Mr. Eisen: Insofar as leasing, the requirements for leasing, and the type of rules and regulations that should be applied thereto are concerned.

The Witness: I don't at present have any knowledge which would indicate there should be a difference on the matter of use of non-owned equipment as between the haulers of dry packages and tank truck operators.

Mr. Eisen: You would state though, would you not, that the critical nature of your example 77 applied primarily to other than tank truck operators?

The Witness: That I am not sure of, because I don't recall, without going through each of these, whether the particular carrier is a tank truck operator or a dry freight operator.

Mr. Eisen: Can you supply for the record, Mr. Blanning, whether any of the examples indicated in your Exhibit No. 2, other than 19-A, apply to tank truck operators?

[fol. 1155] Mr. Idol: I had not completed my cross examination, Mr. Examiner.

Mr. Eisen: I am sorry, I thought you had.

Exam. Lawton: Can you answer that one question?

The Witness: It is possible to get it. Whether the amount of information people are going to ask for justifies the amount of work necessary to go through all of these, I don't know. The information is in our files.

By Mr. Idol:

Q. Mr. Blanning, I wish you would refer to Item No. 63 of Exhibit 2. Can you tell me whether that is a citation of a case or a statement of opinion?

A. That is a general statement of fact as to conditions in that particular area. Instead of giving a typical instance, which is typical of general practices, he made a statement of the general practice in his area.

Mr. Idol: Here again, Mr. Examiner, we have a statement submitted as an exhibit, "Gypsy truckers as a Rule do not observe any safety or other requirements." I object to the admission or consideration of any such unsupported statements. It carries the clear implication, again, that

there is a distinct difference between safety observance by different types of operators.

Mr. Turney: Mr. Examiner, I understood from your ruling a while ago that you were deferring the question as to the admissibility of these exhibits or any part of them, that you reserved that and we were going to dispose of [fol. 1156] that later.

Exam. Lawton: That is right. They have not been admitted as yet, pending cross examination.

By Mr. Idol:

Q. Mr. Blanning, with respect to Item No. 68, under the caption "Insurance", we have reference to two operations in which there was no insurance, both of which appear to be private carriage. The Commission has no jurisdiction to require insurance of private carriers, does it?

A. I don't realize that this is private carriage. A gypsy operator is not a private carrier.

Q. He is not a private carrier?

A. No.

Q. I am curious about that. When he is not under lease to somebody and operating empty, what is his status?

A. I don't know, but he is not a private carrier under the definition of the Act.

Q. I submit, Mr. Blanning, you cannot say he is not a private carrier if you don't know what he is.

A. The definition in the Act is that he is hauling his own property. A private carrier is a person hauling his own property or property under bailment to him.

Q. I have been unable to find, Mr. Blanning, reference in Exhibit 2 to any long-term arrangements for the leasing of equipment which are said to be objectionable with only one or two exceptions. I think I do recall one which I cannot locate at the moment. Do you have any opinion as to [fol. 1157] whether there should be any difference in regulations prescribed for short-term leases or for long-term permanent type leasing?

A. No, I have no opinion at present as to what regulations should be adopted at all to meet the present situation.

Q. If you have no opinion, can you see any justification for any difference in regulation of the two types?

A. Yes. Whether in these leasing regulations or not, I am not sure. The observance of the regulations of the Commission by gypsies is considerably less than that by those who are under exclusive long-term leases.

Q. Mr. Blanning, to your knowledge, is there any difference between observance of the Commission's regulation by carriers, authorized carriers, using their own equipment, and by authorized carriers using equipment leased under long-term arrangements?

A. I am not sure that the study we made on that, those road checks, distinguishes between the leased vehicles under long-term and those gypsies.

Q. I am not speaking of the road checks, Mr. Blanning. Any difference between observance of regulations relating to certificate requirements and insurance.

A. I am not sure I get what you mean. The practice of a person having no authority from the Commission, leasing his trucks to an authorized carrier for long terms, and soliciting business and hauling on his own authorization and control, of course, is different from the use by a carrier of [fol. 1158] its own vehicles.

Exam. Lawton: That wasn't the way I understood that question. I thought your question was directed to two types of certificated carriers, we will say.

Mr. Idol: It is, Mr. Examiner.

Exam. Lawton: One of whom engaged the owner-operators on long-term leases. Is that one part of your question?

Mr. Idol: Yes, sir.

Exam. Lawton: And another one engaged them on the short-term and whether there was any difference between those two certificated carriers in obeying the law. Is that the purport of your question?

Mr. Idol: No, it is not.

Exam. Lawton: I am sorry.

Mr. Idol: Let me give an example to make a little bit more clear what I am talking about.

By Mr. Idol:

Q. We have one authorized carrier who owns a portion of his own equipment and acquires the balance or some of

the balance under long-term lease arrangements with owner-operators or rental companies. Have your investigations found that there is any difference in the observance of any of your requirements by that carrier with his own and with his leased equipment?

A. As to a particular carrier, I am not sure. The practice that exists as to what you are talking about is where the carrier not having equipment of its own, when it wants to [fol. 1159] operate in a part of the territory it is authorized to serve, will enter into long-term leases with owners of equipment.

Q. No, sir, that is the Riss Provider Case you are talking about. That is not what I am talking about. I am talking about a much more prevalent practice where a carrier owns a portion of his equipment and obtains the balance of it through long-term lease, possibly supplemented by additional short-term lease.

Now, my question is this: Is there any difference from the standpoint of Commission regulation with respect to the equipment which that carrier owns and which he acquires under long-term lease?

A. Well, the situations are different. If the carrier does the same dispatching, the same inspecting of his leased equipment as he does of his owned equipment, there is no difference in the observance by the two types.

Q. Thank you, sir. I understand, Mr. Blanning, that you are not recommending the adoption of any of the systems in the regulation covered by the order?

A. That is right.

Q. The proposed rules, however, were prepared under your supervision, were they not?

A. Prepared by me.

Q. One of the effects of those proposed rules would be to require all drivers to be employees of an authorized carrier? [fol. 1160] A. That is right.

Q. As I understand it, however, the rule would not prohibit the use of an owner-operator set-up if the owner went on the carrier's payroll?

A. Whether a man is an employee merely because he is on a payroll, I am not sure.

Q. Well, let's assume he could be. It wouldn't prohibit him, would it, Mr. Blanning?

A. It wouldn't prohibit the hiring as an employee of the owner of the vehicle, no.

Q. That is the point I wanted to make. What do you think you gain by such a requirement if we are to be allowed to continue using owner-operators? What is gained by requiring the carrier to put the owner of that equipment on his payroll over allowing him to continue under the independent contractor type of relationship?

A. That wasn't intended to say that he must put him on the payroll, period. He was to be an employee.

Q. That is what it does say, Mr. Blanning.

A. No, it doesn't. It says he must be an employee.

Q. Yes, sir.

A. Maybe I am wrong as to what is intended. There would be a distinction between those two.

Q. What distinction?

A. In most of the cases of abuses where a shipper uses the [fol. 1161] equipment, as in the F&F Case out west, all of those drivers were put on the payroll of the shipper for the period of the lease. The court order, as I understand it, forbade the use of the furnishing of drivers by the owner of the truck to the shipper. It was considered he was furnishing them. Our position, I believe, was that those people were not employees just because the shipper asked the driver his name, put him on the payroll, and paid him for the period of the lease.

Q. Well, would that be your position under the proposed regulation, if adopted?

A. That would depend on what the Commission says about it. If there is no indication by the Commission, it would be, yes.

Q. We did not so gather. You have a definition in your proposed regulations of a regular employee which apparently was designed, in my opinion at least, to cover the difference between an employee and a regular employee. If I follow you, your answer is now that the proposed regulation is designed to prohibit the use of owner-operators by requiring the driver to become an employee and by construing

that to mean that the employee cannot be the owner of a vehicle?

A. Oh, no.

Q. That is just what you said, I think.

A. I said there is no objection in these regulations to a carrier leasing a truck and hiring the driver as its employee, but there is a distinction between that and saying he must put the owner on his payroll for the period of the [fol. 1162] lease.

Q. I don't follow that answer, Mr. Blanning, I am sorry.

A. Well, maybe there is no distinction, though. The wording was intended in order to avoid the possibility of just entering him on the books as an employee for bookkeeping purposes.

Q. You did propose to prohibit that practice?

A. Yes.

Q. Do you not think that would effectively prohibit the use of the owner-operator?

A. No, it would not.

Q. What would we do with him, Mr. Blanning? We put him on the books as an employee and check his safety record and he runs from A to B and turns in. We have used an owner-operator. I cannot understand from your answer whether the proposed rule is designed to prohibit that or to permit it.

A. It is designed to prohibit the putting of an owner of a vehicle on the payroll and having no control over him at all but paying him separately for the use of the vehicle.

Q. Mr. Blanning, I submit that your answer is not responsive. You have other regulations on control. But you have one specific proposed rule on the subject that the driver must be the employee of the authorized carrier. Let's forget about the control and all the rest of it. Does that particular rule mean that we could use an owner-operator, hire his truck and put him on the payroll and use him for a trip, pay him off, and let him go?

[fol. 1163] A. If he was your employee—if he was the employee of the carrier during the period, yes.

Q. The answer is not responsive, Mr. Examiner.

A. If you don't see any distinction between a man being an employee and being on the payroll, maybe the Commis-

sion or the courts won't. In drafting the regulation there was a distinction in my mind.

Q. The court has made a distinction in the case of the private carrier case which you just mentioned, or the alleged private carrier case. It is a matter of importance, I believe, to get clear whether this set of proposed regulations would accomplish anything. That is what I want to do. It was the understanding of most carriers who read those regulations, I believe, at least those with whom I dealt, that the proposed regulations would permit the use of the owner-operator under the balance of the regulations and provided the driver was, as you say, an employee, but in practical effect on the payroll of the authorized carrier.

I submit to you, Mr. Blanning, that if there is any question about that the Commission should not adopt regulations which no one knows the meaning of. I am curious as to what your interpretation of it was when you put the matter in.

A. I have not recommended the adoption of these regulations or of that particular regulation. It was put in for the purpose of consideration by the Commission in view of the evidence that is being presented.

[fol. 1164] Q. Let's make an assumption.

A. I used that particular wording because to me there is a distinction between those two. If there is no such distinction——

Q. Let's assume, then, that the proposed regulation was put into effect and that it was construed as we have construed it, that it permitted the use of an owner-operator. Would you see, under those circumstances, any advantage in having the driver the employee of the authorized carrier rather than allowing him to drive as an independent contractor subject to your other rules relating to responsibility?

A. Yes.

Q. What advantage is there?

A. It is where the owner of the truck is the driver and does the hauling. The control of the carrier cannot be as complete as it is where he is not.

Q. Is that all you have on it, Mr. Blanning?

A. Yes.

Exam. Lawton: You mean the control of the carrier is better if the owner of the truck is a bona fide employee of the carrier?

The Witness: If the authorized carrier can fire the driver without losing the use of the truck, their control is much better than when they lose the truck at the time they fire the driver, which would be the situation where the driver is the employee.

By Mr. Idol:

Q. Mr. Blanning, that answer is again not responsive. I [fol. 1165] made the assumption. First we have an owner-operator. Second, the proposed rule has been adopted and is construed to permit the use of an owner-operator by putting the man on the payroll.

My question now is, on that assumed basis, what advantage is there in having the man on the carrier's payroll rather than operating as an independent contractor?

A. You say after the rule is adopted?

Q. Yes, and on the assumption that it will be construed to permit the use of an owner-operator from point A to point B, provided that owner goes on the authorized carrier's payroll.

Exam. Lawton: Without relinquishing his truck to the carrier?

Mr. Idol: Oh, yes, he would lease the truck and drive it, but as the driver he would go on the carrier's payroll. That is the precise effect, Mr. Examiner, which most of us, or those whom I have been associated with in the study of those rules, have given to that proposal. We thought that would be the effect it had. Mr. Blanning has some question about it. In order to get an answer, I am assuming that that is the state of fact and then asking whether there is any advantage that he sees in requiring that driver to be on the carrier's payroll rather than operating as they currently do as an independent owner-operator. That is assuming all the other regulations are also in force.

The Witness: I don't get it. If you are assuming that the [fol. 1166] regulation is in effect, the advantage is that he saves whatever fine there would be for violating the law. You are assuming the regulation permits it?

By Mr. Idol:

Q. Yes, sir, I am assuming that the regulation, which says that the driver must be the employee of the authorized carrier, means that the authorized carrier can put the driver on his payroll, lease his vehicle and take him up to point B.

A. Then what is your question?

Q. And then pay him off as a driver and he gets back his equipment and leases it to sombeody else, perhaps, going back.

A. What was your question, then?

Q. My question is, what is the purpose of the rule stating that the driver must be the employee of the authorized carrier?

A. The purpose is that the carrier can fire him and keep the truck.

Q. He could not do that if it were an owner-operator he was dealing with.

A. I know of very few cases where that can be done, although sometimes the lease they sign says so.

Q. I hope we are in agreement. I don't know whether we are or not. I am still trying to find out the purpose of the rule saying that the driver must be the employee.

Now, you tell me that it might be that the carrier can fire him and still keep his truck. Well, he couldn't if he were an owner-operator, of course.

[fol. 1167] Exam. Lawton: Why couldn't he if the truck was leased outright to the carrier and he was put on the payroll as an employee? Could they fire him as an employee and keep the truck under the lease?

Mr. Idol: The circumstance with which I am particularly dealing is the trip-lease proposition where an owner-operator picks up a load at point A and goes to B. As a practical matter, I doubt whether there would ever be any firing done on such an operation. But under the regulations proposed by this order, apparently that could be done. It is not specifically prohibited. An authorized carrier could still use an owner-operator. But there is one rule that says the driver must be the employee of the carrier.

Now in many cases it is currently, perhaps, being done

or would be done under that rule if it were adopted. The same practice might be continued with the authorized carrier, putting the driver on his payroll for whatever number of hours he is on that haul.

I have two questions. First, I asked Mr. Blanning if that could be done. He does not know. He has no interpretation on the point.

My next question is, assuming that it can be done, and that our interpretation is correct, is there any advantage in having that man an employee rather than an owner-operator.

Exam. Lawton: He has answered that a number of times.

[fol. 1168] Mr. Idol: I haven't been able to get an answer or understand an answer on it, Mr. Examiner.

Exam. Lawton: Maybe I didn't get it, but I thought his answer was that in that case he could fire the owner-driver as an employee.

Mr. Idol: If that is all the answer there is, I am satisfied.

Exam. Lawton: Was that your answer, Mr. Blanning?

The Witness: That is right.

By Mr. Idol:

Q. Other of the proposed rules, Mr. Blanning, would prohibit the sub-leasing of equipment. Now, I want you to recall that I am not representing the household goods carriers and with respect to any other operations, what are the major objections to subleasing? I find very few listed in your exhibit.

A. There are not many instances cited in there that don't apply to household goods carriers. Most of the instances of the disadvantage of subleasing are in the case of household goods carriers. There are some in the case of the dry freight carriers.

Q. Under one of the what I call policing rules, I think it is paragraph 2(b), you have a proposal that receipts be given or exchanged between lessor and lessee both at the beginning and the end of any trip?

A. Yes.

Q. What, in your opinion, would be the effect of that in connection with an irregular route operation where the

authorized carrier maintained no terminal at the end of [fol. 1169] the run?

A. If he didn't maintain a terminal and didn't have anybody there, he couldn't hire a gypsy to make a delivery for him.

Q. It would be impossible to use the service except between terminal points?

A. Not necessarily, but it would stop the use of the hiring of a gypsy to make a delivery to a point where the carrier had no employee.

Q. The carrier would have to have an employee?

A. That is right.

Q. These proposed rules make no distinction whatever between long-term permanent type leases of equipment by authorized carriers and the short-term equipment which I understand is the basis of your principal objection to current practices. Do you think long-term permanent type leases should be subjected to these additional regulations if they are doing no harm?

A. I am not recommending that anybody be subjected to these regulations.

Q. You prepared the regulations, Mr. Blanning, and they are part of this order and undoubtedly will receive some consideration.

A. They were prepared like all the others, to represent the views of carriers who had discussed the situation with me and had recommended cures for the situation and I put them all in the order or in the regulation. I wasn't endorsing any of them. I was merely giving the Commission a chance to adopt anything that had been suggested to me by [fol. 1170] carriers as a means of curing the situation, including the abolition of leasing altogether.

Exam. Lawton: They were just put in as a basis for negotiation.

By Mr. Idol:

Q. Would you say in that work that you gave consideration to long-term permanent type leasing as well as to the other and decided there should be no distinction?

A. I am not sure of that. One of the proposals provides

for the use of equipment for six months without any regulations attached to it at all.

Q. Yes, but that is only in the case of your proposal for leasing by carriers to private shippers.

A. No. One proposal is for the renting of vehicles limited to long-term leases and there are no conditions attached to that.

Q. One of the proposals of the order?

A. That is right.

Q. That would, of course, if it were adopted, exclude all of the short-term trip-leases and the use of gypsies entirely. If that course were followed, then we would have no question before us as to whether there should be any distinction between short and long-term because there wouldn't be any short-term?

A. That is right.

Exam. Lawton: We will recess until 1:30 for lunch.

(Whereupon, at 12:15 o'clock p.m., the hearing was recessed until 1:30 o'clock p.m., of the same day.)

[fol. 1171] Afternoon Session, 1:30 p.m.

Exam. Lawton: Come to order, please. We will resume the hearing.

Is there anyone who did not get a copy of that petition filed on behalf of the household carriers conference?

(Several hands shown)

Exam. Lawton: Is there any likelihood that you would want to reply to it?

Mr. Selby: I was wondering if there is any possibility that it could be referred to and handled by the Commission.

Mr. Pou: It may be, Mr. Examiner, that I shall desire to file a reply on behalf of the Bureau of Motor Carriers, but I haven't had an opportunity to read the petition yet.

Exam. Lawton: In view of the fact that some of you haven't yet received a copy, we will have to let the proceeding take its course.

Are you ready, Mr. Idol?

Mr. Idol: Yes.

Mr. Burchmore: May I inquire if you have any particular order of cross examination? I have refrained from interposing some questions, although I will have some.

Exam. Lawton: How does this order meet with your approval: Mr. Idol is proceeding on behalf of the American Trucking Association, is that correct?

Mr. Idol: Yes.

[fol. 1172] Exam. Lawton: Following that, the counsel who represent the carriers who are not being represented by the organizations might proceed—we will call them independent carriers—and then the specialized groups and then the shippers and owner-drivers and other parties.

Mr. Todd: Is that going to be any hard and fast rule? I notice is the way you took the appearances here today, it so happens I represent two associations and also represent some individual carriers.

Exam. Lawton: No, no hard and fast rule, and I didn't mean to take the appearances to differentiate. I merely took them in this order.

Mr. Diehl: Can you repeat the order of proceeding?

Exam. Lawton: I understand there are a number present who represent one or more carriers, who are anxious to complete their part of the cross examination and get home. We will try to follow on that order.

Mr. Pou: Mr. Examiner, I wish to interrupt the cross examination long enough to let Mr. Blanning make a brief explanatory statement which he and I think will probably shorten the cross examination, if I may at this point.

Exam. Lawton: Yes.

W. Y. Blanning resumed the stand and testified further as follows:

Mr. Pou: Proceed, Mr. Blanning.

[fol. 1173] The Witness: In the cross examination this morning, there seemed to be an impression that the statement of law as put in, or the statement that I was giving, was my opinion as to what the law is. The order instituting the proceeding contains as its first provision, a question as to whether any of these practices are unlawful, and the second

is whether regulation should be adopted, so that if any of these instances we have cited are already contrary to law, the Commission can decide that in this proceeding, because that is part of the order; and I thought that in view of the fact that it has been questioned as to whether some of the things called abuses are already violations of law, that can be met in the presentation to the Commission for a determination that it is a violation of law and, therefore, regulation is necessary as to that particular type of practice.

Mr. Diehl: Are we to assume from that, Mr. Examiner, that any statement of Mr. Blanning as to practices which are illegal under the existing law, will not be considered with respect to whether or not other regulations and rules will be adopted as a result of this proceeding?

The Witness: Are you asking me?

Mr. Diehl: I am asking the question of the Examiner.

Exam. Lawton: I don't believe I understood that question.

Mr. Diehl: Perhaps I didn't make it clear. If I understood Mr. Blanning's statement, he has said that the Commission can determine in this proceeding which of the [fol. 1174] practices are presently illegal, without amending the law or the existing regulations. If the Commission determines certain of the practices which are alleged in the exhibits, which Mr. Idol is now cross examining on—No. 2 I have in mind—will the Commission then not consider any of those practices in arriving at a determination as to what rules to adopt on leasing as a result of this proceeding?

Exam. Lawton: I can't say, but I would think they would consider all of these things in their ultimate disposition of the case. They might reach the conclusion, where Mr. Blanning has intimated with respect to some of the practices, no regulations are necessary. I can't say, and I don't think the Commission should be committed to any definite policy at this time.

It would seem that if a practice can be handled under existing law, they will certainly take that into consideration in prescribing rules and regulations.

Mr. Diehl: I have in mind, Mr. Examiner, a lot of Mr. Blanning's testimony and exhibits are colored by practices which we think are not illegal and others are strictly illegal,

in our opinion. I want to know if our evidence should be directed at covering both or just those which perhaps are not illegal but which you or the Director have alleged are perhaps not desirable. I am asking for guidance as to how to conduct our case, more than anything else.

Exam. Lawton: I would say at this time, you should not be limited in your presentation. Out of abundance of cau-
[fol. 1175] tion, I would cover all of the practices with respect to which you have any evidence. The Commission wants the facts, all of the facts, it can get.

Mr. Diehl: Thank you.

Mr. Todd: Mr. Examiner, there is another question I would like to raise at this point as a practical matter. Earlier this morning, there was some inquiry directed to you with respect to whether there would be any other hearings. You said at this particular time you are unable to determine that.

Now, my position is that there are a number of carriers who are here in the city at the present time who would like to get home. They have been here attending a convention, of course, and if there is going to be hearings probably out near Erie someplace, they would go on home and put their testimony in at that time. If there are not going to be such hearings, they will stay until such time as they are able to go on.

The way this is developing, it will probably be Monday or Tuesday before some of those people could get on the stand. I am just wondering if there is any way to determine now whether there was going to be any hearings out in the field, and let these people go home rather than wait around.

Exam. Lawton: No, there will be no hearings in the field unless it develops that is necessary. And I don't believe I could state at this time whether any such hearings will be
[fol. 1176] necessary. We will have to wait at least until tomorrow p.m. before we can reach any conclusion on that.

Mr. Pou: Has there been any motions for such hearings, or requests for such hearings?

Exam. Lawton: There have been requests, but they have

been mere requests, not supported by information as to what the parties are going to develop.

Mr. Selby: Mr. Examiner, I have some witnesses in New York and Boston who are familiar with the overall picture, but unable to attend today. They will be available in New York City. I respectfully move that the hearing be continued to New York City.

Exam. Lawton: Is there any reason why they couldn't come to Washington at some future date?

Mr. Selby: I can't answer that. Possibly they might be able to come to Washington at a future date. There was no certainty as to how long this hearing would continue. They are small operators and are unable to leave their place of business for three or four days, yet the subject matter of the hearing is vital to their continuance. They want to be heard and want a reasonable opportunity to be heard.

Exam. Lawton: I suggest you file a formal request to that effect.

Mr. Jones: Mr. Examiner, I am from Denver, Colorado. I represent quite a number of clients in the Rocky Mountain area; one or two of them are here or have been here, but we [fol. 1177] are nearly 1800 miles away and I know there are 25 or 30 people in that territory who would like to testify in this proceeding but can't possibly come to Washington to do it.

If it is a matter of formal motion, would the Examiner prefer a verbal motion or must we file a written motion for further hearing in the field?

Exam. Lawton: I think a written request would be better. However, you can renew your motion later in this hearing when we see how much progress we make.

Mr. Jones: Did I understand the Examiner to say we would probably have some information on that tomorrow afternoon?

Exam. Lawton: Yes, I would say we would. We will go ahead now and make what progress we can.

Are there any additional appearances again?

Mr. Schubert: Wallace L. Schubert, Southern Building, Washington, D. C., appearing for Pawtucket Trucking Company, Pawtucket, Rhode Island.

Mr. Brodsky: I would like to direct the Examiner's at-

tention to the fact that our petition contains a request for regional hearings as far as the household goods carriers are concerned.

Mr. Grice: I would like to inquire if you will have a hearing on Saturday.

Exam. Lawton: If necessary, yes.

[fol. 1178] Proceed, Mr. Idol.

Cross-examination (Continued).

By Mr. Idol:

Q. One of the proposed rules would require that compensation for leased equipment be on a use basis, time or mileage, and would prohibit the use of, for example, a percentage of revenue method of compensation.

Is that designed as a rule of substance, one which you object to because of substance, or because of its policing aspects?

A. Both. The basis of that rule is the theory that a carrier should be able to haul only in vehicles which it owns or which it has leased and are under its control. If it has leased them, just as you lease a house, you pay for it on the basis of time or some similar arrangement and not on a percentage of the revenue, and the payment on a percentage of the revenue is the normal method of letting somebody haul over your rights for a percentage of the revenue. It is to abolish that practice that the provision is put in the rules.

Q. Is there any case cited which brings out the reason why that is objectionable?

A. No, I don't think the matter has ever been involved in a case.

Q. I did not mean a case before the Commission, I mean in your exhibits. Are there any instances of evils which flow from the use of that type of compensation?

[fol. 1179] A. Yes, a number of them. There is one I think is cited in there, where a carrier having rights up to a certain point runs over the other carrier's route and pays him a percentage in that case of 15% of the revenue to run over the route. It is done by means of making a charge of a certain amount for the lease of the vehicle. It doesn't make any difference to the carrier if he had actually leased

that vehicle how much revenue he has. If he is leasing the vehicle, he pays for the vehicle regardless of its use.

Q. Is the evil the fact that he is paid on the percentage of revenue or the fact that he operated over another carrier's rights, thereby usurping the Commission's function of giving the rights?

A. Paying on the percentage of revenue is the inducement for these people to engage in these practices.

Q. I do not follow on that. The inducement?

A. Yes.

Q. If the same sum were arrived at by some other basis, a use basis, which, of course, could be figured out, would that eliminate the evil involved?

A. No. It would take all of the rules to eliminate the evil.

Q. In other words, if he performed the same operation, and instead of getting his compensation based on a percentage of revenue, he got it on the basis of time or mileage the evil would still be the same, would it not?

[fol. 1180] A. No. The thought back of that particular rule was that when a carrier from New York takes a gypsy, or other truck owner, and has him run a load south for a percentage of the revenue, in those cases normally the carrier who uses the man has no control over him after he leaves the terminal, and sometimes not at any point.

Q. You say that is usually true. It is not necessarily true, is it?

A. No, it is usually true. If he were actually leasing that vehicle, if it were a bona fide lease, he would pay for lease of the vehicle.

Q. Why would he? Might he just as well make it on some other basis?

A. I don't know of any leases that are made, of houses or any other property, where the rental depends on the amount of money you make out of the property. A vehicle is a piece of property. When some other method is used, the indication is that it is not a lease of the vehicle at all, it is a payment of a man for furnishing transportation.

Exam. Lawton: Mr. Blanning, could you speak a little louder, please? Some are unable to hear in certain sections of the room at all.

By Mr. Idol:

Q. That is an inference based on the method used, but I again bring to your attention this circumstance: Let us say that the responsibility provisions of your regulations are [fol. 1181] met. The authorized carrier is actually controlling the operation. Now, would it make any difference from the regulatory standpoint whether the operator of the equipment was paid on a regular or a use base for the equipment?

A. If all of the other regulations were observed and if there were complete control by the carrier whose rights were being used, there probably would be no difference as to how the payment is made. But it so happens that payment of that kind is usually made in the cases where that control does not exist and——

Q. Yes. You have told me that three times, Mr. Blanning.

Now, another of the proposed rules would require the preparation of special manifests for every shipment handled on leased equipment, carrying a great deal of information. A number of the items of information required would be bound to appear on other records of the carrier.

Is there any reason from a regulatory standpoint why all of that information should be required on a manifest, duplicating other of the carrier's records?

A. A lot of the information appears now on manifests that are duplicated in carrier's other records; and a good deal of the carriers keep manifests, but the purpose of that is for policing regulations.

Q. If the same information was held by the Commission in other of the carriers' records, would that not suffice for [fol. 1182] policing purposes?

A. I am not sure. The information on there would be at one point where it could be found and where it normally would be found on a manifest. And I assume if he already has a record somewhere and if we dug around through all of his records and could get the information, we would eventually arrive at the same result.

Q. On interchange rules, Mr. Blanning, is it the intent of the opening sentence of your proposed Rule 2, that au-

thorized carriers would be prohibited from exchanging equipment under any circumstances, except those covered by Rule 3. Your interchange rules are in Rule 3.

Your opening sentence, however, of Rule 2 contains language which might be interpreted as meaning that authorized carriers could not exchange equipment under any circumstances, except those specified in Rule 3.

A. That is right.

Q. That is the intent of the order?

A. Yes.

Q. The proposed Rule 3 covering interchange would limit the exchange of equipment to trailers. I understand, then, from your answer to the preceding question, that authorized carriers would not be allowed to interchange or exchange power equipment under any circumstance.

A. That is the effect of the proposal, yes.

[fol. 1183] Q. Another provision of proposed Rule 3 is that interchange is not permitted where either carrier serves both origin and destination.

A. That is right.

Q. What is the basis for that requirement? Let us presume a case where one carrier might have a circuitous route between points A and B, and he could by interchange share in traffic handled from A and B over a direct route. That would be prohibited under the rule as it stands. What is the basis for that proposal?

A. I don't quite get the circumstances.

Q. Carrier A has a circuitous route between point B and C.

A. Yes.

Q. He could, however, by interchanging equipment, handle traffic over a direct route part of the way between B and C. He would be prohibited from doing it under this rule.

A. By having his own power equipment over that, you mean?

Q. He couldn't even interchange trailers.

A. That is right.

Q. My question is, what is the basis for prohibiting him from engaging in the interchange of traffic over a direct route with another carrier, where the only circumstances

preventing is that he has a circuitous route of his own between the two points?

A. It is due to a theory of a number of carriers and some of our staff that a carrier should not be operating or entering into competition, except over routes where the [fol. 1184] Commission has granted authority. Now, if he can get into competition with a carrier operating over the direct route by interchanging with another carrier, we can't prohibit that, so long as there is a physical interchange of lading. But so long as a vehicle can be interchanged, then we have the situation where a vehicle has been operating over the route without authority of the Commission..

Q. Doesn't that rather fly in the face of Section 216 (c) which gives common carriers the right to set up joint through routes?

A. That is a matter of opinion. That section does not authorize the use of equipment over there.

Q. This would not be leased equipment necessarily.

A. It would necessarily be leased equipment while it is operating over the direct route.

Q. After interchange it would be?

A. Yes.

Q. I have nothing further on the proposed regulation, Mr. Blanning, but I would like to take a few minutes to cover Table VI of Exhibit 3.

Directing attention particularly to the second large column headed, "Per cent of all vehicles by type of violation." Under that is shown, under a column headed "Owned," what I take to be figures that represent the percentage of owned, for-hire equipment on which specific types of viola- [fol. 1185] tions were found. The percentage representing the percentage of total unit checked which were in the particular type of violation.

A. That is right.

Q. And then the comparison under the leased is the same for the leased equipment?

A. That is right.

Q. Now, a considerable examination of all of the sheets of this exhibit indicate to me that there is no major difference between the safety violations on leased equipment op-

erated by for-hire carriers, and owned equipment operated by for-hire carriers.

I would like to know if you differ with that conclusion.

A. No. That is substantially correct, excepting that I have not checked the percentage of leased vehicles there are in comparison to the total number on the road. But this would seem to indicate that, except for some variation within the various regions, there is not a substantial difference in the vehicles leased for hire, and the vehicles owned for hire. There is a difference in favor of the owned vehicles in the percentage of the total.

Q. Now I wish you hadn't added that last one. I would have been all through.

We have no computation here of the entire group of exhibits. Do you have a total computation of them?

A. I had to get this out Friday night, and I didn't wait [fol. 1186] to get a total of the five regions.

Q. You must have something as a basis for the opinion that there is a slight difference in favor of the owned equipment.

A. Well, if you take the vehicles all together, you will notice that in Region "B" on the question of those which violate the logs, it is 36.98 per cent for the owned vehicles, and 41.64 per cent for the leased vehicles of carriers for hire.

Q. Yes.

A. In Region "C", which is the mid-west, on the same thing, which is logs, it is 27.56 per cent for owned vehicles, and 33.99 for leased vehicles.

In Region "D", which is the Rocky Mountain region, it runs the other way—26 and 15. In the far west, it is 21.28 as against 27.80 in favor of the owned equipment.

Q. You skipped Region "A", Mr. Blanning.

A. Region "A" is the only one of the five which is the other way.

Q. Just a moment.

A. I take it back. The Rocky Mountain region is also the other way.

Q. That is on one particular item. You will find variations in all of the percentage all of the way down, on the question of logs. You have those variations, but my ques-

tion is, as to the whole proposition, do you see any difference of substance on the overall safety factor between the for-[fol. 1187] hire owned vehicles and the for-hire leased vehicles?

A. Well, in my opinion, the principal difference between the two as shown on here is in hours of service, and that is the one that is generally shown. And that is illustrated by the absence of logs.

Q. Well, you have separate computations on excess daily and weekly hours.

A. But your excess daily and weekly hours can only be shown when you have logs. For those trucks that did not have logs, there is no question of finding violation of the excess daily or weekly hours. These are on a sheet and you check off each violation. Of course, you can't check anything on weekly hours or daily hours violations if there is no log there.

Q. That is true, of course. Now, on private vehicles, how does the situation run there, in your opinion?

A. It seems to run about the same as it does for hire, except that both the owned and leased vehicles on that feature, which to us is an important feature, is higher on the for-hire.

Q. If you consider logs important, I point out that in Region "A", private-owned equipment had 69 per cent figure as against only 46 per cent for the leased.

A. But both of them being higher than that of carriers for hire.

Q. But the differential is in favor of leased equipment, and the same appears to be true right on down through [fol. 1188] every region on the privately-owned equipment.

A. Yes.

Well, now, all we did was get the reports that came in. We tabulated them and ran them off on stencils and here they are. I have not attempted to either evaluate what they show or determine what effect they should have on the proposals that are before the Commission. We weren't trying to prove anything.

Q. I appreciate that. I think you have a wonderful piece

of evidence in here, and you are to be congratulated on the thoroughness with which you went into that phase of it.

Mr. Idol: I have nothing further, Mr. Examiner.

Cross-examination

By Mr. O'Brien:

Q. Mr. Blanning, would you kindly give me an interpretation of Rule 2 (k), please?

A. 2 (k)?

Q. Yes.

Exam. Lawton: Just a moment. I wonder if you are not a little out of order.

Mr. Markowitz: I believe you should call out the group to come next.

Exam. Lawton: I understand American Trucking Association has completed cross examination.

Mr. Idol: That is right.

Exam. Lawton: My indicated order was the independent carriers who are in the proceeding would follow next.

[fol. 1189] Mr. Ellis: We don't want to cut this gentleman off, but there are some of us who are independent carriers who want to examine.

Mr. O'Brien: I would be glad to withdraw, but I don't think it would take more than four minutes.

Exam. Lawton: Any objection to Mr. O'Brien continuing?

(No response.)

Exam. Lawton: All right, you may proceed.

Mr. O'Brien: Thank you.

By Mr. O'Brien:

Q. Would you mind interpreting Rule 2 (k) for me?

A. If there are regulations adopted permitting the use of trip-leased vehicles, certain of the regulations would not apply to motor carriers who have presented a plan to the Commission in a formal proceeding which involved the lease of vehicles, and where that plan was approved by the Commission.

At the time that was drafted, I knew of only two, and today know of only two, where that has occurred, which was Railway Express Agency, which, at the direction of the Committee was to present a plan for use of Star Route Carriers and Allied Van Lines, which was directed to present a plan and did. I put that in there not because I favored the exception of those or any others, but in order to call attention to the fact that that condition did exist, and if the Commission or the carriers wanted exemptions, that section would take care of it.

[fol. 1190] Q. Now, Mr. Blanning, you say you know of two cases. I would like to call your attention to the case of Illinois Central Railroad Company, common carrier application, contained in 12 MCC 485, in which the Commission—I would like to read through this, but I don't want to take up the time of the Examiner and the rest of you gentlemen—in which the Commission has specifically dealt with the plan.

It says, "If a certificate is granted, Applicant will conduct its operation with leased equipment. Under date of February 8, 1938, it entered into an agreement with the Railway Express Agency, Inc., whereby the latter will furnish Applicant with all of the vehicles that may be required. As compensation for the use of the vehicles, Applicant agreed to pay 15 cents per truck mile. Seven tractor and semi-trailer units are to be provided."

And it goes on to speak of the number of units and what is expected. It goes on to say, "The traffic will be continued to be handled on Applicant's bill of lading at rail rates, the same as if common carriage were by rail."

It goes on to state further, "Applicant is to exercise control and management over the trucks with respect to directing the manner in which the trucks are to be operated, and the manner in which the freight is to be handled. The equipment will be devoted solely and exclusively to the use of Applicant, and under the agreement, Applicant has the right to require the removal from duty of any of the [fol. 1191] vehicles or any person or persons employed thereon for good and sufficient cause.

"Applicant's name will appear on all the equipment, and

Applicant will direct the time and place of collection and delivery as well as the routes to be traversed."

Later it states, "Applicant will pay 15 cents per mile each miles that the trucks are operated and this rental will be paid regardless of whether the trucks are loaded or empty."

I ask you, Mr. Blanning, whether under this particular plan which was approved by the Commission in granting this order, whether or not this plan is within the meaning of Section 2 (k) as covered by 2 (k)?

A. I am not familiar with your proceeding you are speaking of, nor the order itself. It was not in contemplation at the time the section was put in, any more than that a large number of motor carriers whose method of operation was described in the report and approval was granted to the carrier. If that is what is meant by your case, it was not covered by the section referred to; whether it comes within the intent, I wouldn't be able to say now.

Q. In other words, you wouldn't say that it comes under the heading of a case that Rule 2 (k) is designed to correct?

A. I would not like to pass on that now, because I am not familiar with the operation.

Q. In other words, you do not feel that 2 (k) could be [fol. 1192] classified as an ex post facto; or that it would overrule the authority granted by the Commission, as being unlawful by later prescription of the rule?

A. If I understand you, Rule K does make an exception for certain types of carriers. I only happen to know two in that type. If that can be done, of course it can be done for other carriers, possibly yourself. I was merely stating what I think the present reading of Paragraph 2 was intended to cover.

Q. And you say you are not familiar with this particular case I have in mind, from which I cited?

A. No.

Q. From what I have read, you are not in a position to say whether or not Rule K would find any objectionable features to that particular authority and arrangement?

A. Well, the purpose of proceeding is for the Commission to determine whether there are any objectionable practises under certificates which it has already issued, and it is easily

possible that they may have issued a certificate to you that permitted certain things they now find objectionable. But I am not familiar enough with that to pass on that or give an opinion to you on it now.

Mr. O'Brien: I think that is all. Thank you.

Exam. Lawton: Now, who is first for the independent carriers?

Mr. Markowitz: Is this independent carriers you are [fol. 1193] calling for?

Exam. Lawton: Yes.

Cross-examination.

By Mr. Markowitz:

Q. Can you tell us whether it is the desire of the Bureau of Motor Carriers to have the Commission inaugurate a set of rules as a result of this proceeding?

A. Our first desire is that the Commission tell us what is illegal about what is now going on. And having decided, if it decides that some of the things going on are illegal—which the exhibit I put in indicates they are—there should be something done to remove those practices. Whether it can be done or should be done by regulation, or it requires a change in the law, I don't know.

Mr. Lieberman: May we have that answer read back?

(The answer was read by the reporter.)

By Mr. Markowitz:

Q. If such rules or regulations were adopted by the Commission on that finding, would the regulation within the motor carrier law enable you to detect these violations?

A. Some of the regulations, where trip leasing is permitted, would assist us in the enforcement of the law as it now stands, in detecting violations.

Q. In dealing with that matter of the difference of the man who is an employee and the man on the pay roll, would you advocate that the owner-operator be given the status of an employee, including such benefits and protections of [fol. 1194] law that affect other employees?

A. Yes.

Q. You would approve of that?

A. Yes.

Q. And would you also have the proposed rule separate entirely the leasing of the equipment and hiring of drivers for all purposes?

A. That is what that set of regulations provides, and was intended to provide, if a carrier intends to augment his equipment, he should do so by leasing equipment having no relation to the driver, and hire a driver whether or not it is the owner.

Q. May I ask if you approve of that principle?

A. I am not sure, because I would like to know more about what effect that is going to have on the carriers. You see, my investigation so far has been as to the reports from our field staff and the effect on regulation itself. Carriers may be adversely affected by a regulation of that kind to an extent that the cure would be worse than the disease. I don't know whether that is true or not, but I would rather find out what is brought out along that line here before I would state.

Q. Do you think the owner-operator can have the status of an employee if his employment is terminated on the same day it begins, such as a one-way trip lease?

A. I think it is possible. I hire a man by the day to cut my grass.

[fol. 1195] Q. You don't give him all of the benefits of the employees in the Bureau of Motor Carriers, including pensions and such things?

A. No.

Mr. Markowitz: That is all I have.

Exam. Lawton: Who is next?

Cross-examination

By Mr. Bischoff:

Q. Mr. Blanning, do you have any records of cases in which the carrier assumes full responsibility as far as the regulatory bodies require it, but the owner-operator is not in the relationship of employee to the carrier, in which compliance has not been obtained?

A. You mean compliance with safety regulations?

Q. Or any other regulations which the Commission exercises jurisdiction over?

A. We have a large number of reports of cases where a carrier has a certificate from us, he uses owner-drivers and the owner-drivers do not observe our regulations. Is that what you mean?

Q. I mean in addition to that, the carrier exercises full responsibility and does not delegate any of his responsibility as far as the regulations of the Commission are concerned.

A. A carrier who holds a certificate has full responsibility every time he hires one of these men.

Q. He enters into a contract with one of the owner-operators.

A. He nevertheless is responsible to the Commission for observance of the Commission's laws, and to the public for accidents.

[fol. 1196] Q. What regulation is required on the part of the Commission in order to get compliance, than that the carrier shall contract to assume full responsibility?

A. We have not been obtaining compliance when that has occurred.

Q. Well, you haven't been obtaining compliance in many other instances where the question of owner-operator is not involved, isn't that true?

A. That is right.

Q. Are you aware of any instance in which a carrier has exercised that control which the Commission requires over owner-operators, but as a part of the contract the owner-operator is not an employee of the carrier?

A. I think there are cases of that kind.

Q. You wouldn't have any to present at this hearing, would you?

A. You mean cases where an owner-driver is used and the control over him is as great over him as in the case of an employee?

Q. Yes.

A. I think there are cases of that kind.

Q. Where the compliance has been less effective than in the case where the owner-operator is an employee.

A. We have a large number that are less effective. I thought you were asking for ones that are as effective.

Q. I want to know if there are any less effective.

A. Oh, yes.

Q. Have you any to present in this record?

[fol. 1197] A. I think there are a number of them in that exhibit.

Q. Will that exhibit show whether the carrier has actually exercised that degree of control over the contracting party, the owner-operator?

A. Of course, where there is a violation, he hasn't exercised his control, normally.

Q. Your exhibit will throw light on the subject, whether any particular carrier has exercised that degree of control I have included in my hypothetical question?

A. I am not clear on that. If the carrier has exercised the control over the man, and has prevented the violation, of course there are less viola ns.

Q. Well, would the rule established by the Commission demanding that be adequate to cover the entire matter from a regulatory standpoint?

A. I would doubt that any regulations we have are going to be adequate to get 100 per cent compliance.

Q. That is true of any of your regulations, or any law for that matter.

A. Yes.

Q. One other question: A good deal of testimony has gone in the record regarding carriers who allow other operators of vehicles to use their operating authority. Has the Commission ever instituted an investigation here before this one, or filed a complaint against a carrier who exercised, [fol. 1198] engaged in that practice?

A. Oh, yes. We have prosecuted a number who have engaged in that practice.

Q. Well then, it isn't a moot question any more?

A. It is a disputed question. In every case we have where we go into prosecutions, there is a question that arises as to whether it was a bona fide lease and bona fide operating arrangement between the two parties. Normally, I think of those where we thought we had enough evidence

to prove there was a lack of that, and we have got a favorable decision, of course.

Q. Is it the position of the Commission that the owner of an operating right can grant authority to the operator of another vehicle to operate over the carrier's rights?

A. It is our position that we cannot.

Q. Isn't that practice engaged in with the full knowledge of the Commission?

A. I believe not as such. There are cases where people are operating—where we think they are operating—where a vehicle is owned by a person not holding a certificate is being used by drivers owning that vehicle, using billing of an authorized carrier and the authorized carrier receiving a percentage of the revenue for permitting his billing.

In some cases, that is clearly illegal and we take them into court. In some cases, the paper work and arrangement is sufficient or such that it is difficult to prove that it isn't [fol. 1199] a bona fide operation by the carrier holding the certificate. It is to meet those cases where there is a difficulty in deciding whether it is a violation, that is the reason for some of these proposed regulations.

Q. Isn't it just as illegal for one carrier to use the operating rights of another carrier, as for an owner-operator who has no rights using the rights of an authorized carrier?

A. Oh, yes.

Q. And is that being enforced at the present time, to your knowledge?

A. It is to the extent that we are able to obtain proof that they are using the other man's rights and are not operating as agents under a contractual arrangement with the carrier holding the authority. When I say "to the extent," of course we are not able to prosecute everybody we have reason to believe is violating the law.

Q. Has the Bureau issued any instructions to its directors and supervisors to that effect?

A. Effect of what?

Q. That one carrier may not permit another carrier to use the operating rights of the first carrier?

A. I don't recall the specific instruction to the field, but I don't think there is anybody in the field who would ask

that question. They would take it for granted that he has no right to do that. That was among the initial instruc-[fol. 1200] tions they got when they first came with the Bureau.

Q. You know of no written bulletins or instructions—written instructions of any such kind, do you?

A. I don't recall, no.

Mr. Bischoff: That is all.

Cross-examination.

By Mr. Ellis:

Q. Mr. Blanning, I would like to direct attention to your prepared statement, Page 3, where I read the following: "Each man on our field staff was then instructed to give me specific instances of any practices prevalent in his area concerning interstate transportation for hire in non-exempt vehicles which are not owned by carriers holding operating rights, which practices he considered undesirable."

Do you have that before you?

A. Yes.

Q. Were those instructions given orally or in writing?

A. Writing.

Q. Were they the same to all members of the field, or were there different instruction to different people?

A. Same instructions given to all members of the staff.

Q. Do you have in your files a copy of that letter of instruction you sent out, which was the basis for compiling this information?

A. I assume I do.

Q. Are you willing to make a copy of that letter a part [fol. 1201] of this record?

A. Oh, yes.

Q. Now, for the present, since it is not available—I request that be done, Mr. Examiner, since the director has indicated he is willing to do so.

Exam. Lawton: How soon can you have that available, Mr. Pou?

Mr. Pou: One of us or I can go to Mr. Blanning's office and if the stenographer can find it, we can produce it forthwith.

Exam. Lawton: You will have a copy of it before the close of this hearing?

Mr. Pou: We shall.

By Mr. Ellis:

Q. For the present moment can we assume that the sentence I read accurately presents a digest of that communication?

A. That communication also had in it other matters. I don't recall the form in which it went out, except that it was a general circulation to the field staff.

Q. As to the matters involved in this case, is that a fair statement of what is included there?

A. That is right.

Q. I heard you testify this morning, and I think it is a fair statement to say that you repeatedly stated you had done this and done that in connection with this case in order to get all of the facts before the Commission. Do you recall that?

[fol. 1202] A. Yes.

Q. I take it that is your position.

A. That is right.

Q. Why was it that you didn't instruct your field men to report to you the advantages, if there are any, of the use of leased equipment, trip leasing, and so forth, of certified carriers?

A. I assume that if we gave the practices that are going on that we consider are undesirable and make regulations necessary or desirable, the carriers who would be affected would give the advantages.

Q. You are then presenting one side of this situation, aren't you?

A. I am presenting the undesirable practices that exist, yes.

Q. Do you recognize that there are desirable features to the public, the shipping public, the Commission, and the

carriers, for the use of leased equipment, including trip-leased equipment?

A. Yes, there are some desirable practices. And it was for the purpose of showing the extent of that, that I made that tabulation of the amount of leasing that is being done by carriers.

Q. Would you be good enough to tell us in the record what some of those advantages in connection with leased equipment are, with which you stated you are familiar?

A. Well, I wouldn't want to go into all of the advantages there are.

[fol. 1203] Q. Well, I do. You have certainly gone into the disadvantages rather thoroughly, and I would like to get what the advantages are, if there are any, and you say there are some.

A. Well, I haven't prepared a complete statement. I assume you will put in whatever advantages there are for your client. For example, there are fruit trucks hauling fruit from Florida to New York. They are not authorized to haul property for hire, except exempt property. There is more general freight going south to the Florida region——

Exam. Lawton: Would you please raise your voice? I can hardly hear you up here.

The Witness: I say there is more general freight going from the New York area to the south, than there is to the north. For some reason, the fruit is not moving by the carriers authorized to handle the general freight. The general freight carriers, then, lease the vehicles of the fruit haulers and in that way avoid the empty trip one way, and the fruit haulers avoid an empty trip one way, by leasing vehicles to the carriers for hire in the north.

By Mr. Ellis:

Q. You see nothing wrong with that?

A. Yes.

Q. You think it is an advantage, but you still think there is something wrong with it?

A. That is right.

Q. Do you think there are some advantages that there
[fol. 1204] isn't something wrong with it?

A. I don't think of any.

Q. Are we to understand that this is sort of an adversary hearing in here with the Bureau of Motor Carriers setting up all of the disadvantages, and you are now stating on the record that there isn't any advantage at all in the leasing of equipment?

A. No.

Q. Well, at least the advantages in your discretion are not outweighed by the disadvantages, is that right?

A. I am not sure of that, and if I were, I would be making a recommendation in this proceeding, which I am not.

Q. Well, in any event, you just told one side of the story, isn't that right?

A. That is right.

Q. You didn't feel in the spirit of fair play with the motor carriers and on the part of Motor Carrier Bureau that you should have gotten the information from your field men as to the advantages, if any?

A. That is right.

Q. I see.

Exam. Lawton: It would be the disadvanatges that would call for regulation, wouldn't it? If it was all in the case of advantage, there wouldn't be any need for regulations.

Mr. Ellis: Sometimes the advantages outweigh the dis-
[fol. 1205] advantages that sometimes the regulations are not called for. I just wanted to call attention to the Commission whether the Bureau of Motor Carriers want to present all the facts or only part of them.

Exam. Lawton: I hope you will develop the advantages for the record.

Mr. Ellis: Yes. Since the Bureau wouldn't, I am sure, before the case is over, we will attempt to.

By Mr. Ellis:

Q. Now, Mr. Blanning, in this letter, and this investigation which you had these field men make, which was devoted exclusively to trying to find disadvantages, as I

understand you to testify, you have summarized these results in your Exhibit No. 2, is that correct?

A. That is right.

Q. Now, I hope it won't be necessary to ask you about all of these.

Beginning on Page 7, there are a lot of items which run on, I think to the end of the document on Page 20, some 76 various sorts of circumstances and conditions which you state were reported to you, is that right?

A. That is right.

Q. Now, some of those, Mr. Blanning, is it not a fact, are isolated instances, and you had one report only of this, isn't that right?

A. I believe not.

[fol. 1206] Q. Well, I recall one here. I don't have the number. It was brought up this morning that somebody who was advertising trucks for sale for a certain figure of money—who was it that did that, if you know?

A. I don't recall the name of the company now.

Q. Is there any other motor carrier in the United States, that you know of, doing that?

A. Yes.

Q. How many?

A. I know of one as of today.

Q. Well, that is an isolated instance, isn't it?

A. The one today, no. It has been done frequently.

Q. How many motor carriers are there in the United States holding certificates and permits in your Bureau, approximately?

A. There were 19,001 that were interviewed in active operation when we made this survey.

Q. And we understand today that there is only one that has followed this practice you have seen fit to set out in your exhibit?

A. No, I say there is one doing it today. That was not the situation last February or March.

Q. You can count on the fingers of your hand, all that are doing it now, ever did do it.

A. Fingers of one hand?

Q. Yes.

A. No.

[fol. 1207] Q. How many are there, then?

A. I don't know. We hear of that all the time. Whether it amounts to a dozen or two dozen over a period of ten years, I don't know.

Q. It is an infinitesimal number when compared with 19,000, isn't that right?

A. It is less than one per cent, yes, that I have heard of.

Q. If I should take the time, and I hope it won't be necessary, to refer to each of these items set out here, how many of them would the less than one per cent apply to, of the 19,000 carriers?

A. Of the 19,000 carriers?

Q. Yes.

A. I would say most of them, because the big majority of carriers don't use leased vehicles at all.

Q. Do you want to make that statement, Mr. Blanning?

A. I will give you the figures.

Q. All right. I would like to have the figures.

A. Of 19,000 carriers now operating, 13,409 do not practice leasing at all, and 1495 reported that although they have done some leasing, it is not important to their business.

Q. Now, in those 13,000, how many of them are one and two-truck operators that contribute nothing whatever substantially to the transportation picture of the United States?

A. That also is shown in Exhibit 5.

[fol. 1208] Q. Would you be good enough to call it to our attention?

A. Exhibit 5?

Mr. Eldred: Table 5 of Exhibit 3.

The Witness: I beg your pardon. It is Table 3 of Exhibit 3. That is by regions and I don't have a compilation of it for the country.

By Mr. Ellis:

Q. I don't want to take a lot of time, but isn't it a fact that that figure didn't include a number of large owners? You said there were 13,000 who didn't lease, and I asked if

those weren't all principally one and two-truck operators, small truck operators.

A. Oh, yes. All carriers are principally small operators.

Q. Did you consider the tonnage basis, considering the freight moved in the United States, of how many of them used leased equipment?

A. I didn't make any study of tonnage.

Q. Do you have any information on that matter?

A. Only as you might gather from the number of tractors used, which is shown on Table 3 of Exhibit 3.

Q. Would you agree with me that tonnagewise the great majority of the carriers of the United States use leased equipment of one sort or another?

A. You mean the majority of tonnage moved by carriers is moved on leased equipment—use leased equipment?

Q. Yes, one way or another.

[fol. 1209] A. I think that is true, but I have no figures to back it up.

Q. You agree that is substantially correct?

A. I merely say that I think it is. I haven't any figures on that.

Q. So on the basis of freight moved in the United States by motor vehicles, these purported improper or illegal practices numbered 1 to 76, inclusive, are practiced by an infinitesimal part of the carriers performing that business. That is correct, isn't it?

A. No.

Q. You don't agree with that?

A. Oh, no.

Q. Do you think most of the motor carriers in the United States are now in one form or another violating the law, Mr. Blanning?

A. In one form or another. I believe if we went into any carrier's records with a fine-tooth comb, we would probably find some violations, yes.

Q. Of course, we understand all that, but do you have the impression that that portion of the motor carrier industry that is moving the lion's share of the freight in this country is engaged in willful law violation?

A. No. There is none of these regulations intended to meet any law violations.

Q. Do you think they are engaged in willful improper practices?

[fol. 1210] A. I think a large percentage of them are; and of those who are, a large percentage of them would like to have them discontinued, but they feel they cannot themselves discontinue them as long as the others do not.

Mr. Lieberman: May I have that answer read back, please?

(The answer was read by the reporter.)

Mr. Lieberman: Is that a correct statement, Mr. Blanning?

The Witness: Yes.

Mr. Lieberman: Thank you.

By Mr. Ellis:

Q. Are you basing this information contained on Exhibit 2 on that type of information?

A. No, I am basing that on my conferences and discussions with motor carriers over the past 12 years.

Q. Beginning at the top of Page 4 of your prepared statement, and running into about the middle of Page 5, the purported copy of a letter—what was the date of that letter?

A. I don't recall.

Q. Well, was it recent?

A. It was about the time this investigation started. That is in my statement.

Q. According to your report, that started back in 1940.

A. I mean this present proceeding.

Q. You mean 1947?

A. That was somewhere around the first of December, 1947.

Q. And to whom was the letter addressed?

[fol. 1211] A. Of that I am not sure.

Q. Was it to you?

A. Of that I am not sure.

Q. Have you got it?

A. I don't know.

Q. Well, where did you get it to transcribe it in here?

A. I copied it from the letter.

Q. Well, you did have the letter at one time?
A. That is right.
Q. What did you do with it after that?
A. Of that I am not sure.
Q. Who signed that letter?
A. It was signed by the safety man—I forget his title—of one of the large companies.
Q. Now, Mr. Blanning, you know when I ask who signed that letter, I mean the name of the man.

Mr. Pou: Mr. Examiner, I——
The Witness: I don't know.
Mr. Pou: Well, if he doesn't know, I don't need to object.

By Mr. Ellis:

Q. What was the name of the company.

Mr. Pou: I would like to object now to Mr. Ellis calling on Mr. Blanning to disclose information he is not authorized to disclose at this hearing, when the name of the company does not throw any light on the facts being inquired into in this proceeding. It doesn't make any difference [fol. 1212] what particular carrier that was. If, in fact, that letter was received from one of the larger carriers, as the statement says it is, that is sufficient for this purpose.

Mr. Ellis: I want to call to the Examiner's attention that in referring to the letter this morning, both witness, and counsel who now objects, stressed the fact that it was typical. I want to find out: typical of what? If we know the name of the carrier, we may be in a position to rebut it through, being familiar with the nature of his operation, and who they are and what they do.

Until that time, we are in the dark. And I think it is a proper question. You don't throw all rules of evidence out the window when we come before the Commission, as has been suggested this morning by some counsel.

And I submit to you that there is no court in the land, and there should be no commission in the land, where a letter can be produced which is important enough to take up a whole page of this document and you have to rebut

it, without knowing who wrote it, when it was written, and the facts and circumstances under which the letter was written.

Exam. Lawton: Do I understand the position of the director and his counsel, is that you feel you should not disclose the name of the carrier?

Mr. Pou: I haven't discussed that with Mr. Blanning. He might not feel he should disclose that information. If [fol. 1213] he does feel he should disclose that information, it is his privilege to testify, of course.

The Witness: I have quoted the letter as an illustration of the type of an operation that is going on——

Mr. Ellis: May I interrupt, Mr. Examiner? I may not be entirely familiar with proceedings before this Commission—I have appeared here a few times. I don't know whether it is proper, when there is an objection to the pending question, for the witness to go on talking and tell the Examiner why he should rule one way or the other. The facts are before you and there should be a ruling before any further testimony by the witness.

The Witness: You didn't hear the Examiner ask me what I thought about it?

Mr. Pou: The witness is trying to answer the Examiner's inquiry.

Mr. Ellis: I thought you asked the question of counsel.

Exam. Lawton: Both counsel and the witness.

Mr. Ellis: Then I may be wrong.

The Witness: The letter is quoted merely as a statement of conditions which I knew existed, and I would prefer not to give the name of the company whose representative signed the letter, because I don't want to make any admissions by that company of conditions which other companies are equally guilty of.

Mr. Lieberman: I'm sorry, I didn't get that answer, and [fol. 1214] I respectfully ask that it be read by the reporter.

(The answer was read by the reporter.)

Exam. Lawton: I think under the circumstances that I should not order him to produce this letter. After all, this proceeding is not intended to gather evidence to proceed

against any one carrier. It is a general investigation. He put this in as part of his background of reasons for recommending the investigation.

You made a motion, I believe?

Mr. Ellis: No sir, I asked the question——

Mr. Pou: I made an objection to his question in which he asked for the name of the carrier.

Exam. Lawton: Objection sustained.

By Mr. Ellis:

Q. You are the Director of the Bureau of Motor Carriers?

A. That is right.

Q. All of the employees of the Bureau, including the Examiners, are under your control?

A. The administrative procedure examiners are not.

Q. I just asked you if the Examiners of the Bureau of Motor Carriers are under your supervision and direction.

A. All but the administrative procedure examiners.

Q. Is this the letter, which you set out on Page 4 and 5 of your prepared statement—all of the letter or part of it?

A. I think it is all of the letter.

[fol. 1215] Q. It is my recollection that there is a paragraph with some reference to a personal conversation.

A. I am not positive of that. It is some time since I have seen that letter.

Q. Conversation between whom?

A. Between the person he was addressing and the person who signed it. It is my recollection—now, as I say, it is some time since I got that letter—it is my recollection that it was addressed to one of our district directors and the original was sent in to me.

Q. Would that conversation throw some light on the circumstances under which the letter was written?

A. No.

Q. Isn't it a fact that the letter was written at a time when your Bureau or agents were threatening or proposing to prosecute that unknown carrier for violation of the Motor Carrier Act?

A. No.

Q. That is not true?

A. No.

Q. Have they been prosecuted subsequently?

A. No.

Q. Had they ever been prosecuted?

A. Yes.

Q. How recently had these violations occurred?

[fol. 1216] A. I don't recall.

Q. Isn't it a fact that this was a follow-up letter, in your Bureau, as a result of those court proceedings?

A. I believe not.

Q. You are not sure about that?

A. No.

Q. Mr. Blanning, I understood you to say that as to these rules and regulations, they were prepared by you.

A. The draft that is in the order?

Q. Yes.

A. Yes, I think that was entirely as I drafted them.

Q. Later, I understood you to say that you were not making any recommendations about them one way or the other, is that right?

A. That is right.

Q. Will you agree with me that the fact that you prepared them would carry the presumption that you are in favor of them?

A. Oh, no, because there are four mutually contradictory proposals in that.

Q. The import of them is the same.

A. Oh, no. One is to prevent all leasing, and the other is to prevent unlimited trip leasing.

Q. I understood you to say further about those, that in preparing those different kind of rules, you were preparing the views of carriers who had discussed the matter with you.

A. That is right.

[fol. 1217] Q. What carrier was it that recommended to you the different rules you set out in your—attached to the order? Who were they and which carriers favored them?

A. I haven't the least idea. I talked to several thousands of carriers in the last several years on this matter and have

had a variety of opinions from them. As to which ones favor a particular set of rules, I couldn't attempt to make any list now.

Q. Well, it isn't a fact that this list represents the views of any of the carriers, is it? It represents your views after you have had conversation with some of the carriers?

A. Oh, no. None of them represent my views.

Q. Well, let's take them one by one, then. I forget how many there are.

Rule 1—is that a rule that is a result of your ideas, or did some carrier or carriers recommend that to you?

A. Well now, as to the actual draft of the rules under the fourth provision—that is what you are talking about—there are four proposals in here. You are talking about the fourth one, which is to permit trip leasing subject to regulation?

Q. Yes, those rules that are attached to the order of this hearing.

A. You say, are the views mine or——

Q. I am not trying to quibble with you. I understand the language is yours, but I want to know whether the idea behind them is yours, or do you still insist that the motor [fol. 1218] carriers suggested them to you?

A. These regulations, the substance of them were suggested either to me or members of the field staff by motor carriers. They are, of course, not the wording of any motor carrier.

Q. I understand that.

A. As I stated in my prepared statement, a draft was made by a member of our staff, sent to the field, revised, sent to a number of carriers—I had conferences and discussions on that draft with several hundred carriers individually, in addition to a number of contractors, and what is here is a compilation of the result of all those conversations.

Q. Thank you. Just one other matter and I am through. Our friends, the rail carriers, are present here in this proceeding. I am not sure just what they are doing here but I am glad to have them any place I am. That leads me to ask you this question? Are you familiar with the fact

that the rail carriers interchange equipment and lease equipment back and forth all over the United States?

A. Rail equipment, you mean?

Q. Yes.

A. Yes.

Q. When you see a freight train, it is liable to have a car on it from every railroad of the United States, isn't it?

A. Yes.

Q. That is to facilitate the free flow of interstate com-
[fol. 1219] merce from border to border and coast to coast of this country?

A. Yes.

Q. It has been a beneficial thing, hasn't it, Mr. Blanning?

A. As far as I know. I am not familiar with the effect of it, but I assume it has been beneficial.

Q. Admittedly the problems are not always the same, because of the physical difference, but do you realize or recognize there is a similarity between the railroads interchanging or leasing their equipment between rail carriers and the leasing of motor carriers' equipment?

A. Oh, yes.

Q. Did you take into consideration in proposing some rules and regulations for the Commission, the fact that although rail carriers have been regulated by this Commission since 1887—if I have the date of the founding of this Commission correct—is that right, Mr. Diehl?

Mr. Diehl: Yes.

By Mr. Ellis:

Q. That down to date they have never once promulgated rules or regulations governing the interchanging of equipment or lease of equipment from one railroad to another? Did you know that?

A. I thought they had.

Q. You didn't take that into consideration?

A. I thought they had, but I don't think that would have made any difference.

[fol. 1220] Q. Do you know that the I.C.C. has left that matter entirely to the railroads; that they draw up their own rules and regulations, police the matter themselves

and take care of it, and the Commission only steps in in an advisory capacity when some difficulty arises? Did you know that?

A. No.

Q. Did you know that the most recent of those rules and regulations which are subject of agreement between all of the railroads of the United States, is Circular No. T 188, which supercedes T 180 and supplements thereto, in effect January 1, 1948, and published by the Association of American Railroads, 59 East Van Buren Street, Chicago 5, Illinois?

A. Never heard of it.

Q. Now that you have been advised of that fact, if it be a fact, what would you think of, before promulgating a lot of drastic rules and regulations which might put a lot of motor carriers out of business, which might seriously hamper the free flow of interstate commerce, which might hamper the industry of this country—what would you think of letting the motor carrier industry adopt rules and regulations such as the railroads have been able to do?

A. I have tried to get them to do that for eight years.

Mr. Ellis: That is all.

Mr. Markowitz: What was the answer?

(The answer was read by the reporter.)

[fol. 1221] Cross-examination.

By Mr. Burton Wheeler:

Q. I would like to make this observation. As a matter of fact, the Congress of the United States has passed a law governing the interchange of railroad equipment, and has compelled them to under certain circumstances, with reference to the interchange of their freight cars and connections and so forth.

In view of the statement that was made by counsel with reference to the great number of people that might be benefitted by it, and the reason why there should be no rules or regulations because of only a small percentage of the people of the industry violating—conducting some bad

practice, I want to ask you, Mr. Blanning, if it is a fact that the reason why the laws are passed and the rules and regulations are adopted by Commissions, is because of the fact that it is always a small percentage of the population that violates common decency so it necessitates the rules and regulations being passed?

Mr. Lieberman: I object, if Your Honor please, to the question. In the first place, I don't know whether it is directed to Mr. Blanning's opinion of what all commissions do as the Senator has indicated, or whether he is directing the question solely to the practice of the I.C.C.

In any event, I don't think Mr. Blanning should be called upon to answer a question of that sort. I think it is beyond his province.

[fol. 1222] Exam. Lawton: Read the question, please.

(The question was read by the reporter.)

Mr. Lieberman: I might also observe in connection with my objection, that the question of common decency is not in issue here in the first place. And secondly, the question assumes that the motor carriers as an industry are not decent in the conduct of their business, and I think the industry resents such a remark.

Mr. Burton Wheeler: Nothing of the kind was intended by the question. I say that there are some people in the industry who have not conducted themselves in the manner they should. Not only that, the industry itself came to the Congress and wanted the act passed. They testified before the Congress of the United States day after day, a large majority of the industry, asking that the act be passed because of the conduct of some of the people in the industry.

Exam. Lawton: Let's not have any more argument at this time between counsel.

Mr. Lieberman: I press my objection.

Exam. Lawton: Objection overruled.

Did you answer, Mr. Blanning?

The Witness: No.

In answer I would say that if the majority of the in-

dustry believed in some practice, the passing of a regulation to stop it would be useless. It is only when the minority [fol. 1223] are violating that the regulations would be effective.

Exam. Lawton: Do you know whether any of the state regulatory bodies have regulations governing the renting of equipment by carriers?

The Witness: Yes, there are several states. I had intended to prepare an exhibit along that line, but I didn't get it. There are several states that forbid it altogether. What the number is, I don't know. I didn't make a study of it.

Exam. Lawton: I think we will take a five-minute recess.

(A short recess was taken.)

Exam. Lawton: Come to order, please.

Are there any additional appearances to be entered?

Mr. Fagg: Charles J. Fagg, representing the Eastern Brewers Traffic Association, New Jersey State Chamber of Commerce, and Middle Atlantic Shippers Motor Carriers Committee.

Exam. Lawton: For the benefit of the parties who did not get copies of the petition of the household goods carriers conference, I understand there are copies available. Those of you who did not get copies of the petition may get one at this time.

Is there any further cross examination of Mr. Blanning on behalf of the independent motor carriers?

Cross-examination.

By Mr. Diehl:

Q. Mr. Blanning, you have several times stated on the record that you have no recommendation to make at this [fol. 1224] time with respect to regulations and so forth, that the Commission should adopt.

A. That is right.

Q. You did, however, recommend the institution of this proceeding, did you not?

A. I did.

Q. When are you going to be in a position to recommend to the Commission—tell us what you are going to recommend in the way or regulations.

A. I don't know that I will make any recommendation, because now that the proceeding is instituted, first the Examiner and then the Commission will base its decision on the record made at this hearing, and I will not be called on to make any recommendations.

Q. So we can't expect any definite testimony on the part of you or any other witness of the Commission during the course of these hearings as to what recommendation the Bureau is going to make to the Commission, is that right?

A. The Bureau is not going to make any recommendation to the Commission unless it is made on this record. And the only reason I am qualifying that is, that if these proceedings should run on for several months and there should be a lot of testimony introduced, we may be in a position then to make a recommendation. I am not now in such a position.

Q. Do I understand by that, you would make a recom- [for. 1225] mendation the same as an Examiner would make a recommendation as to what he thinks the Commission should do about a proposed report?

A. No, a representative of the Bureau, the same as any of these organizations, may make a recommendation on this record.

Q. Now, going back a moment to your Exhibit No. 3, Mr. Ellis asked you some questions about the number of carriers and the tonnage involved, being hauled by those who lease equipment. I am not sure I understand you exactly.

I would like to call your attention to your Table 3. In "B" you have a compilation of equipment, and if I read the summary correctly, there is a ratio of about five units to one, the larger number being owned by companies who are engaged in leasing, and who do use leased equipment and consider it an important part of this business. Is that correct?

A. No.

Q. What is the ratio?

A. I don't believe it is on here, is it?

Q. Well, you will have to do a little calculating. Perhaps I should have said three to one.

A. Well, the much larger number of vehicles are owned by carriers who are either not engaged in leasing, or do not consider it important.

Q. Is that what this exhibit says?

A. I would gather from the figures here. It is a hazy compilation.

[fol. 1226] Q. Well, take the total at the bottom of the first column,

A. Yes.

Q. —which appears under carriers which regard leasing as important. Under the word "trucks," we have 11,346. Now, on the fifth column, under carriers which regard leasing as unimportant, the same corresponding figure is 5,000.

A. I don't have that table. What table is it?

Q. Table 3, Region "A."

A. Now, what is your question on that?

Q. I say, the equipment owned as shown by your Table 3, Region "A", the first four columns are devoted to setting forth total equipment, as I understand it, trucks, tractors, semi-trailers, and full trailers, owned by carriers that regard leasing as important.

A. Yes.

Q. And the total at the bottom of both inter-city and local. It says, "Trucks, 11,346."

A. Yes.

Q. Skipping across to the corresponding figure under the next heading, which is carriers which regard leasing as unimportant, the corresponding total of trucks is 5,000. So it is about half the total owned equipment owned by companies that regard leasing as unimportant, as those that regard it as important, is that correct?

A. No. That may be misleading. The second figure you [fol. 1227] read represents those carriers which do lease equipment but consider it unimportant. The next column you have missed, which is 21,540 trucks, are those who do not lease equipment at all.

Q. Where do you find that on Table 3, Region "A"?

A. The third column, under the column with the word "trucks" ahead of it.

Q. Are you assuming that those carriers who do not lease equipment at all are opposed to the practice of leasing?

A. Oh, no.

Q. Then that does relate to the first two columns I am attempting to compare.

A. There is no comparison that way that I can see. We had three questions: One, do you lease equipment; second, if you do lease equipment, do you consider it important; and the third one, do you not lease equipment at all? We tabulated into those three groups.

On the figures you are using, there are a total of 16,600—and some who have trucks owned by persons who are engaged in leasing, and 21,000 that are owned by people who do not engage in leasing.

Q. Give me the figures on tractors.

A. You are speaking of Region "A", which is one of the five regions into which these statistics are divided, and represents approximately New England and from here north along the Atlantic seaboard.

[fol. 1228] The figure for tractors is 11,751 owned by carriers who regard leasing as important; 2,929 by persons who engage in leasing but don't consider it important; and 8,478 by carriers who do not do any leasing.

Q. Now, taking those three figures, the total of the second two doesn't quite equal, does it, the total owned by those who do regard leasing as important?

What I am getting at is: I want you to state for me, or make this record clear, that those carriers that you have queried, who regard leasing as an important phase of their operation, do own a dickens of a lot of equipment themselves.

A. Oh, yes.

Q. In addition to that which they lease?

A. That is right.

Q. And they own so much of it, in fact, that in this region the group that regards leasing as important, own, have themselves, as many tractors as the group that regard leasing as unimportant and those who don't practice it at all combined, isn't that correct?

A. That is right.

Q. That is pretty much so for each of the regions?

A. I believe it is slightly different in the far west. Well, it is different in each region. The figures are in here, but the number of carriers who regard leasing as important are a substantial part, and although I haven't tabulated it, [fol. 1229] probably a majority of all of the carriers.

Q. You are speaking now of the equipment?

A. I am speaking now of tractors only as a measure of volume of business transported. As I mentioned to Mr. Ellis——

Q. You have already said you didn't have the tonnage figures.

A. I didn't have the tonnage, but the number of tractors is some gauge of tonnage.

Q. That is the reason I adopted it. It was your reason to Mr. Ellis that brought that up.

Now, you spoke to the Examiner about some states that absolutely prohibit leasing. Did I understand you to say that?

A. That is right.

Q. What state prohibits right now, long-term leases?

A. I would not like to say now, because I intended to make a study and didn't have it made.

Q. Are you going to have it before this hearing is concluded?

A. I hope the hearing is concluded before I have it made, because the only way I can get it is by contacting each of the states.

Q. You have been working on the preparation of this case quite a while, haven't you?

A. Yes.

Q. Do you consider what any of the states have done should be of importance to the I.C.C. in passing on this matter?

A. I think it is important only to this extent: The reason [fol. 1230] I made the statistical study, Table 3, that is, the first five tables of Exhibit 3, was in order to advise the Commission of the effect it would have on the industry if it adopted any restrictive regulations, because I think the Commission should consider, in the adoption of regulations,

what effect it is going to have, and that was the purpose of that.

The only purpose I had in mind in considering putting in the state provisions was to show what effect the restrictions that there are in the states have had on motor transportation in those states.

Q. Well, some of the states, including your home state of Pennsylvania, have been regulating motor carriers a long time before the government got around to it.

A. That is right.

Q. And you have had something to do with that in Pennsylvania, haven't you?

A. Yes.

Q. You feel, I take it, your answer to my question is that, specifically, state regulations are of some value to the Commission, or might be.

A. Oh, yes. The state regulation is a guide not to what the states are doing, but informing the Commission as to the effect of any improper proposed regulations.

Q. The results of it?

A. That is right.

[fol. 1231] Q. Now, in Exhibit No. 2, as I understand it, this was prepared by you, or your staff, based upon reports submitted to you from the field staff throughout the country.

A. That is right.

Q. Did you use all of the reports submitted by the field?

A. Oh, no.

Q. What method of selection was used in arriving at which ones you would use?

A. I started with one that came in and took from that any instance of a practice which sounded as though it would be an undesirable practice. As I read through the rest of them, I didn't repeat any that involved the same type of practice, even though the incidents were different.

Q. Are we to assume that that represents every suggestion of the field force as to a problem regarding leasing?

A. Oh, no.

Q. Well, what I am getting at is: How did you determine which one of the suggestions from the field force you would use in compiling this exhibit?

A. The suggestions of the field force are not included in

this at all. This includes only examples of specific instances which illustrate conditions that are prevalent in the territories.

Q. You say "illustrate conditions which are prevalent." Again I want you to tell me, do these examples which, I [fol. 1232] believe, somebody has said are typical—I want to know how many reports you had from your field supporting example no. 1, and how many reports you have from the field supporting example no. 77.

A. I haven't compiled that. I don't know. If I ran across an instance similar to one that had already been copied down, I just passed it over, whether it occurred once of 54 times.

Q. So that the number of complaints or suggestions from the field on one particular item had nothing to do with whether or not that item was put in here?

A. That is right.

Q. Who determined the weight of the various suggestions, if you didn't use a numerical count—by what basis did you arrive at the suggestions you adopted for your exhibit?

A. There was no weight given. If an example were given by one of the field staff of a practice common in his territory, it was included in the list.

Q. Provided you thought it of sufficient importance? That is, it is your judgment that went into compiling this?

A. Yes, but not from the standpoint of whether I thought it was of sufficient importance. It was whether it was illustrative of a practice.

Q. In illustrating a practice, you did not undertake to determine how prevalent or how wide the practice might be?

A. That is right.

Q. Now, getting back to the matter you have discussed [fol. 1233] at some length—not enough length, I might say—the suggestion with respect to determining the method of compensation. I am not quite clear on it. Mr. Idol asked you two or three questions.

I would like to know what complaint in your Exhibit No. 2 results in a statement by you that consideration should be given to prohibiting compensation by compiling a percentage of revenue. Do I make that clear?

A. Oh, yes. I am not sure I can point to any of them by number, but quite a few of the illustrations in Exhibit No. 2 relate to types of transportation where the holder of a certificate received a percentage of the revenue from the person who owned the equipment which did the transporting.

Q. What I am trying to get at is, what is bad about that practice? If you think it is bad, I want you to tell me why you think it is bad, or why your field staff thinks if was bad, or whoever said it was bad.

A. Well, both the field staff and a number of the members of the industry have said it was bad——

Q. What is your opinion on it?

A. Whether it is bad or not?

Q. Yes.

A. That I am not prepared to say. Undoubtedly it is undesirable. By undesirable, I mean there are undesirable features about it. Whether there are desirable features to overcome it, I don't know, because the testimony here has not yet been completed.

[fol. 1234] Q. Well, you and the Commission do not propose to develop any of the favorable side of that, I take it.

A. That is right. The undesirable feature of it is that it is the usual method used by a person without authority to operate his trucks over the routes of a person who has authority and receives a ~~percentage~~ of the revenue—rather pays to the certificate holder a percentage of the revenue for being permitted to do that.

Q. Have you had any reports reflected in these exhibits from your field staff as to the abuses of that particular practice—the lack of control by the Commission of leasing or anything you choose to call it, which results from the mere method of compiling a man's pay?

A. I think a number of the instances in there illustrate that difficulty.

Q. Have you said somewhere in the course of this proceeding that because of that method of compensating for equipment on a percentage of revenue, that the operating ratio figures are not a true statement of the carrier's condition.

A. Oh, no.

Q. Have you said it with respect to companies that have

subsidiary companies from which they lease all of their equipment?

A. That is in my prepared statement as a reflection of the attitude of the Bureau of Account and Cost Finding.

Q. Did you or your staff make any examination to deter- [fol. 1235] mine the relative amount paid for a similar service by a company on the basis of percentage of revenue compared to fixed-figure prices?

A. I don't believe that any of our studies cover that point.

Q. Did your studies at all go into the matter of the compensation—I mean the relative total value of compensation to the owner-operator, we will say, from the certificated carrier for a type of service where, on the one hand, he was paid the percentage of revenue, and, on the other, a fixed amount?

What I am trying to get at is: Which will give the owner-driver the best break, if you have any such statistics?

A. I don't believe we have any figures on that. I don't recall that it was covered by our questionnaire, and if it wasn't, it wouldn't be in our figures at all.

Q. If I understand your testimony correctly, your field staff has reported to you that certain bad boys are receiving a percentage of revenue, or paying a percentage of revenue, as a method of compensation, and in order to make it impossible for them to do it, you are going to prohibit it throughout the industry, if such rule is adopted.

A. I am not prohibiting anything.

Q. I'm sorry, I meant the Commission.

A. I am putting in a suggestion of a way to meet a situation which is admittedly bad. Whether it is too drastic or not is a matter for the Commission to decide on the basis [fol. 1236] of what testimony is put in here.

Q. That is the reason I want you to tell me your opinion, if you have one.

A. I don't have one.

Q. You haven't thought whether the cure might be worse than the disease?

A. I thought it might be.

Mr. Diehl: All right.

By Mr. Burton K. Wheeler:

Q. If the practice is continued—whether or not this rule is too stringent, I don't know—if the practice is continued as it is, it does permit a breaking down of the rate structure, does it not, between some of these people, and if it is broken down by a few people, then the better element, we will say, if you call them that in the trucking industry, has to also break down the rate structure in order to compete with them.

I am wondering if that is what you are trying to get at.

A. One of the objections to the present practice is that if a carrier pays only a percentage of the revenue for the use of the vehicle and driver, and keeps a percentage himself, it doesn't make so much difference to him what the rate is. He makes a percentage of the rate, whatever it is. And when other carriers owning their own equipment find it necessary to adjust their rates to meet their costs, the same pressure is not on the man who uses owned equipment for which he is paying a percentage of the revenue to obtain. [fol. 1237] I think the objections that come from the industry—or rather the suggestions that came from the industry that resulted in that being put in the proposed regulation, resulted from that feeling on the part of those carriers who own their own equipment and feel they are the stable part of the industry.

Mr. Diehl: You say that despite the fact that you have just testified that the tremendous number of equipment owned is owned by those who indulge in these practices?

The Witness: I was referring not to the leasing practices, but the practice where one pays a percentage of the revenue to pay for the lease of the truck and driver.

Exam. Lawton: Are there any other questions?

Cross-examination.

By Mr. Hobmann:

Q. Based on your Exhibit 2, the alleged abuses of leasing, they are not all chargeable to the authorized carrier. Some of that is done without the knowledge and consent of the carrier by the owner of the truck?

A. That is right.

Q. Would you say that the abuses by the operator of the truck would be in the majority of the cases?

A. Well, it depends on what you call the abuse by the owner. The owner would not be able to engage in those practices I speak of, if the present method of leasing were not in existence, because even when he operates without the consent of an authorized carrier, he does it under the [fol. 1238] pretense of having been leased to an authorized carrier, or operating under an arrangement with him.

If those arrangements had to be more definite or were prohibited altogether, then that particular abuse could not exist to any extent.

Q. Some of the alleged abuses by the owner-operator are rather shady and possibly could be done even under regulation such as proposed here. What I am getting at here is that these regulations here refer to what the authorized carrier may do under Rule 2, under Rule 3, and under Rule 4.

I would like to know what there is going to be, or what the Commission proposes to force the owner-operator into compliance with the regulations.

A. I can't tell you what is in these regulations.

Exam. Lawton: Mr. Eisen.

Cross-examination.

By Mr. Eisen:

Q. Mr. Blanning, will you refer to Rule 2 (c), please, and interpret for us your understanding of the term "use basis"?

A. It is explained in the parenthesis, such as time or mileage.

Q. Would you make that a maximum or minimum cost of the operation of the vehicle, or what level or yardstick would you use?

A. I don't understand what you mean.

Q. You say that the compensation shall be computed on a use basis. Now, are you giving any consideration to the [fol. 1239] amount or level of the compensation?

A. No.

Q. Let us assume that instead of a carrier providing for a compensation payment related to the revenue, that the carrier sets forth an amount of compensation computed by taking a percentage of the rate. In other words, instead of asking for 75 per cent of the revenue and the rate is one dollar on a particular movement, that the carrier specified that the rate is 75 per cent—rather 75 cents per 100 pounds, would you condemn that?

A. Yes.

Q. How would you find out what the basis is?

A. I don't know that we would always find out. But if a carrier wanted to use a piece of leased equipment with driver, and he wanted to obtain 75 per cent of the revenue, if he were to just divide the number of miles by 75 per cent of the revenue and make his contract on that basis, to me that would be a subterfuge that wouldn't be hard to detect, and I believe it would be considered a subterfuge if such an order went into effect.

Q. Are you familiar with the fact that there is such a thing as mileage rate by carriers?

A. Yes.

Q. And theoretically those mileage rates are supposed to reflect the cost of operation, plus an amount for overhead [fol. 1240] and profits?

A. I presume so.

Q. Now, if the lessee and the lessor agreed among themselves what proportion of the mileage rate reflects the actual cost of operation, and what proportion of that mileage reflects overhead, and the compensation for use of equipment is predicated on that percentage of a mileage rate, would you condemn that?

A. I can't at present visualize the conditions under which those mileage rates are used; whether the same abuses exist there as in the case of ordinary classified freight. It is my impression that where the mileage rates are on file with us, they deal with only one class of commodity and the same rate applies regardless of the commodity being hauled to which the rate applies.

Q. Do you realize that in tank truck transportation, a large measure of the rates are made on a mileage basis?

A. Yes.